

163

Vol. IV

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 606

LOUIS BUCHALTER, PETITIONER,

vs.

PEOPLE OF THE STATE OF NEW YORK

**ON WRIT OF CERTIORARI TO THE COUNTY COURT OF KINGS COUNTY, STATE OF
NEW YORK**

No. 610

EMANUEL WEISS, PETITIONER,

vs.

PEOPLE OF THE STATE OF NEW YORK

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

No. 619

LOUIS CAPONE, PETITIONER,

vs.

PEOPLE OF THE STATE OF NEW YORK

**ON WRIT OF CERTIORARI TO THE COUNTY COURT OF KINGS COUNTY, STATE OF
NEW YORK**

PETITIONS FOR CERTIORARI FILED { **DECEMBER 30, 1942.**
 { **JANUARY 2, 1943.**
 { **JANUARY 4, 1943.**

CERTIORARI GRANTED MARCH 15, 1943.

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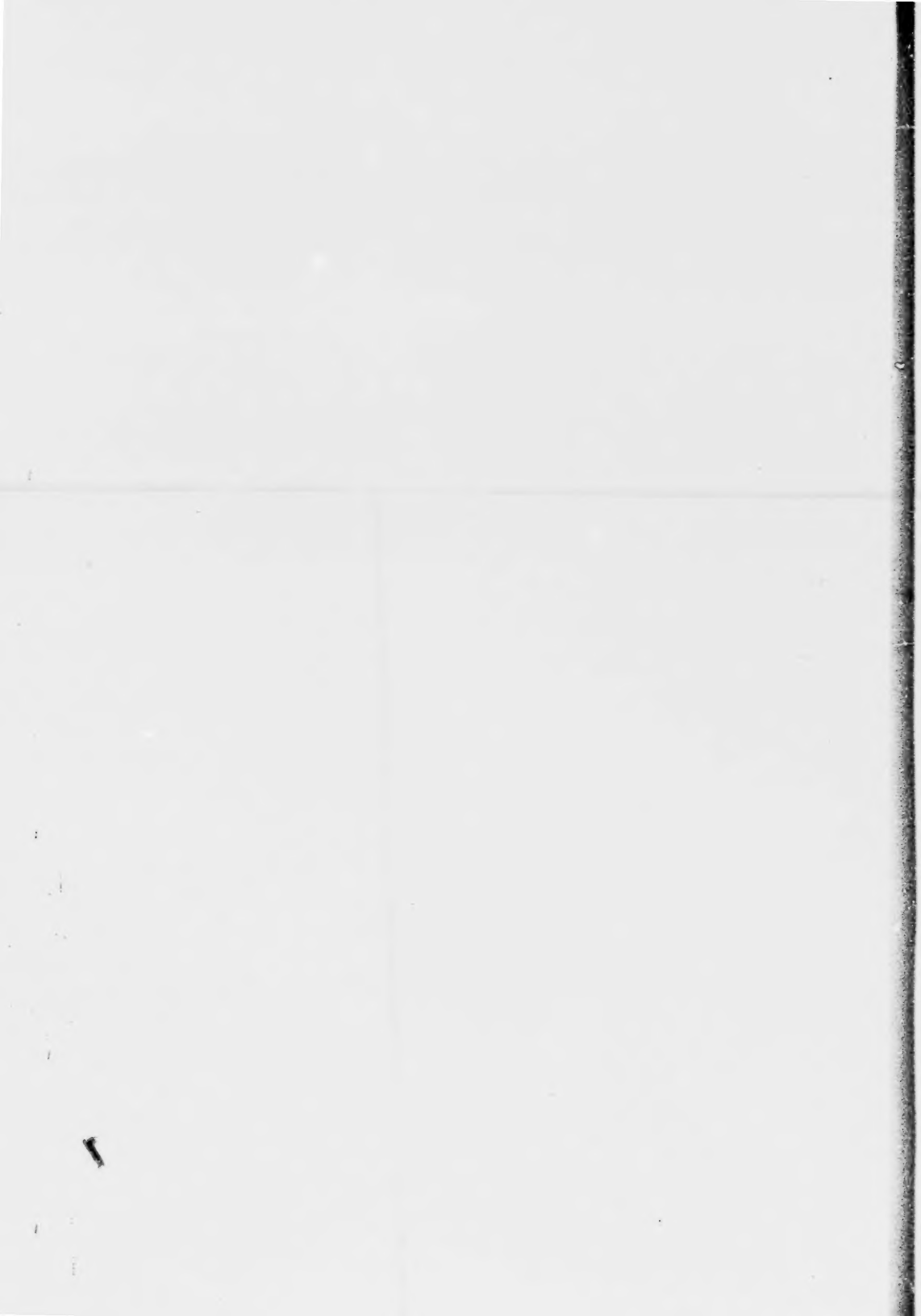
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Seymour Magoon—For People—Direct

7261

SEYMOUR MAGOON, residing at 608 Pennsylvania Avenue, Borough of Brooklyn, City and State of New York, called as a witness on behalf of the People, being first duly sworn, testified as follows:

Direct examination by Mr. Turkus:

Q. Magoon, how old are you? A. Thirty-three.

Q. Will you keep your voice up, keep it at the same tone as mine, if you can, so that it will be audible to everybody in the jury box and to defense counsel, some of whom are to my rear. Are you married? A. Yes, sir.

7262

Q. Have you any children? A. Yes, sir.

Q. About how many? A. Two.

Mr. Fischbein: We do not hear you.

Q. You will have to speak more loudly because the last jurors here must hear you and there are defense counsel to my back and your voice must carry to them as well.

7263

Q. Did you go to public school? A. Yes, sir.

Q. How far did you go in public school? A. Eighth grade.

The Court: Loud. Repeat it.

The Witness: Eighth grade.

The Court: Can't hear it.

The Witness: I have a sore throat, your Honor.

The Court: Let a court attendant stand here and repeat his answers.

7264

Seymour Magoon—For People—Direct

Q. Did you graduate from public school? ³ A. No, sir.

Q. How old were you, Magoon, when you quit school? A. About sixteen years old.

Q. Did you after you quit school go to work? A. Yes, sir.

Q. And did you thereafter get some odd jobs? A. Yes, sir.

7265

Mr. Turkus: I think he is doing all right now.

Q. Did you know a man by the name of Harry (Pittsburg Phil) Strauss? A. Yes, sir.

Q. How long did you know Harry Strauss? A. About fifteen years.

Q. Did you know him by any other name besides Pittsburg Phil? A. Yes, sir.

Q. What name? A. Big Harry.

Q. Did you know a man by the name of Martin Goldstein? A. Yes, sir.

Q. Did you know him by any name other than Martin Goldstein? A. Yes, sir.

7266

Q. What name? A. Buggsy.

The Court: You may repeat, if you wish.

Q. Buggsy Goldstein? A. Yes, sir.

Mr. Barshay: Will your Honor grant me one objection?

The Court: Yes.

Mr. Barshay: —with respect to the defendant Buchalter, on the ground that it does not in any wise tend to connect him

with the commission of the crime. It is not binding upon him. I take one exception and I won't interfere with Mr. Turkus.

The Court: I have not the least idea as to whether it is or not binding. Overruled.

Mr. Barshay: Exception.

Q. Did you also know one Abie Reles? A. Yes, sir.

7268

Q. How long did you know Martin (Bugsy) Goldstein? A. About fifteen years.

Q. And does the same go for Abie Reles? A. Yes, sir.

Q. Do you know the defendant Louis Capone? A. Yes, sir.

Q. How long do you know Louis Capone? A. About nine years.

Q. About nine years? A. Yes, sir.

Q. Did you know a man by the name of Albert Anastasia? A. Yes, sir.

Q. How many years did you know him? A. About eight or nine years.

7269

Q. Eight or nine years, is that correct? A. Yes, sir.

Q. Do you know the defendant Mendy Weiss? A. Yes, sir.

Q. How many years have you known Mendy Weiss? A. About five or six years.

Q. Did you meet Mendy Weiss in Brownsville? A. Yes, sir.

Q. Do you know exactly where it was that you saw Mendy Weiss in Brownsville for the first time? A. Yes, sir.

7270

Seymour Magoon—For People—Direct

Q. Where? A. At the corner.

Q. At a corner? A. Yes, sir.

Q. At what corner did you see Mendy Weiss in Brownsville for the first time? A. Saratoga and Livonia Avenue.

Q. Saratoga and Livonia Avenue? A. Yes, sir.

Q. Which particular corner of Saratoga and Livonia Avenue was that? Describe it by the place of business that was on the corner. A. A cigar store.

7271

Q. Was this cigar store also a candy store? A. Yes, sir.

Q. Was that place a hang-out for the boys from Brownsville? A. Yes, sir.

Q. Do you know a man by the name of Farvel Cohen? A. Yes, sir.

Q. How long do you know Farvel Cohen? A. About five or six years.

Q. Do you know a man by the name of Harry Maione? A. Yes, sir.

Q. Do you know Maione by any name other than Harry?

7272

Mr. Rosenthal: That is objected to. It is in no wise material to this trial.

The Court: Overruled.

Mr. Rosenthal: Exception.

(Pending question read.)

A. Yes, sir.

Q. What name? A. Hap.

Q. Is that short for Happy? A. Yes, sir.

Q. Do you know Frank Abbendando?

Mr. Rosenthal: Same objection.

Seymour Magoon—For People—Direct

7273

The Court: Overruled.

Mr. Rosenthal: Exception.

A. Yes, sir.

Q. You said you knew him? A. Yes, sir.

Q. Did you know Frank Abbendando by any name other than Frank? A. Yes, sir.

Q. What name? A. Abby and "The Dasher".

Q. Is that (spelling) A-b-b-y? A. Yes, sir.

Q. And "The Dasher"? A. Yes, sir.

Q. How long do you know Maione and Abbendando? A. Several years.

7274

Q. Were you associated with the men whose names I have just questioned you about, namely, Strauss, Pittsburg Phil Strauss, Martin (Bugsy) Goldstein, Abie Reles, Louis Capone, Albert Anastasio, Farvel Cohen, Harry (Happy) Maione and Frank (The Dasher) Abbendando—

Mr. Rosenthal: I object to the form of the question.

Q. —and Mendy Weiss?

7275

The Court: Overruled.

Mr. Rosenthal: Exception.

Mr. Barshay: May I object to it as not binding on the defendant Buchalter?

The Court: Overruled.

Mr. Barshay: Exception.

Q. I did not hear the answer. A. Yes, sir.

Q. Did that association have a name? A. Yes, sir.

Q. What was the name? A. The Combination.

Q. The Combination? A. Yes, sir.

7276

Seymour Magoon—For People—Direct

Mr. Barshay: I move to strike out the answer as not binding on the defendant Buchalter.

The Court: Overruled.

Mr. Barshay: His name not having been mentioned by this witness in any respect, your Honor.

The Court: Denied.

Mr. Barshay: Exception.

7277

Q. Without stating what the nature of the business was, do you know of your own knowledge whether Martin (Bugsy) Goldstein, Harry (Pittsburg Phil) Strauss, Abie Reles and Louis Capone were engaged in business together?

Mr. Rosenthal: I object to that upon the ground it calls for a conclusion.

The Court: Sustained.

Mr. Turkus: I will put it in this form, then:

7278

Q. Did you work for Martin (Bugsy) Goldstein, Harry (Pittsburg Phil) Strauss, Abie Reles and Louis Capone?

Mr. Rosenthal: I object to the question upon the ground, first, it is leading and suggestive; second, it calls for a conclusion.

Mr. Talley: I object to it.

Mr. Turkus: Conclusion whether he worked for them?

Mr. Talley: Same grounds.

The Court: Overruled.

Defense Counsel: Exception.

Seymour Magoon—For People—Direct

7279

Mr. Barshay: May I have an objection on another ground?

The Court: Yes.

Mr. Barshay: Not binding on the defendant Buchalter in any respect whatever.

The Court: Overruled.

Mr. Barshay: Exception.

The Court: Just answer that yes or no.

A. Yes.

7280

The Court: Let me have those names again, please.

Mr. Turkus: Martin Buggsy Goldstein, Harry Pittsburg Phil Strauss, Abe Reles, and Louis Capone.

The Court: All right.

Q. Were the four of them your boss?

Mr. Rosenthal: I object to that.

The Court: Overruled.

Mr. Rosenthal: Exception.

7281

A. Yes, sir.

Q. Did you receive a salary? A. Yes, sir.

Q. Without stating the nature of the instructions, did you from time to time get orders and instructions from your four employers?

Mr. Rosenthal: I object to that, not binding on this defendant.

The Court: Overruled.

Mr. Rosenthal: Exception.

7282

Seymour Magoon—For People—Direct

Mr. Talley: Same objection.

Mr. Barshay: I object to it, that it in no wise involves the defendant Buchalter.

The Court: Overruled.

Mr. Barshay: Exception.

Q. You may answer. A. Will you repeat that question, please?

(Pending question read.)

7283

A. Yes, sir.

Q. Did you obey the orders and instructions?

Mr. Rosenthal: Objected to.

A. Yes, sir.

The Court: Overruled.

Mr. Rosenthal: Exception.

Mr. Barshay: Your Honor, will you give me one general objection? It is apparent it does not involve the defendant Buchalter and I won't interfere.

7284

The Court: Yes.

Mr. Barshay: And one exception.

Q. Was your answer yes? A. Yes, sir.

Q. Did you on or about Labor Day in the year 1936 leave the State of New York? A. Yes, sir.

Q. Where did you go? A. Out to California.

Q. To the State of California? A. Yes, sir.

Q. Did you go alone? A. No, sir.

Q. Who went with you? A. Bugsy Goldstein.

Seymour Magoon—For People—Direct

7285

Q. How long did you and Bugsy Goldstein remain in the State of California? A. About a month.

Q. From California where did you and Bugsy Goldstein go?

Mr. Rosenthal: Objected to as in no-wise connected with this trial.

The Court: Overruled.

Mr. Rosenthal: I respectfully except.
(Pending question read.)

7286

A. Back East.

Q. And by "back East" what State did you go to? A. New York State.

Q. Did you go to some place in New York State, a town, a village, or a city, having a name? A. Yes, sir.

Q. What was the name of the place where you and Bugsy Goldstein went?

Mr. Rosenthal: That is objected to.

The Court: Overruled.

Mr. Rosenthal: Exception.

7287

A. Milton.

Q. Was it Milton, New York? A. Yes, sir.

The Court: You mean right above Marlboro?

The Witness: Yes, sir.

The Court: Just below Highland?

The Witness: That is right.

Q. Did you and Martin Bugsy Goldstein stay in or about Milton, New York? A. Yes, sir.

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Mr. Rosenthal: Make the same objection.

The Court: Overruled.

Mr. Rosenthal: Exception.

Q. In what kind of a place did you and Goldstein stay?

Mr. Rosenthal: Same objection.

7289

A. A tomato farm.

The Court: Overruled.

Mr. Rosenthal: Exception.

Q. A tomato farm, is that right? A. Yes, sir.

Q. Who owned the tomato farm? A. Man-
nesse (phonetic spelling)

Q. A person by the name of Mannesse? Is
Mannesse spelled (spelling) M-a-n-n-e-s-s-e? A.
I would not know.

Q. Was the Mannesse tomato farm a place
that you used for a hideout?

7290

Mr. Rosenthal: That is objected to, not
material to this issue.

The Court: Overruled.

Mr. Rosenthal: Exception.

A. The mob used it for a hangout.

Mr. Rosenthal: I ask that that be
stricken as not responsive.

The Court: Strike it out.

Q. Did you, is the question, among others use
that place for a hideout? A. Yes, sir.

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Q. Did other people use that Mannesse tomato farm up in Milton, New York, for a hideout?

Mr. Rosenthal: I object to that.

Mr. Talley: I object to it as immaterial, irrelevant.

Mr. Rosenthal: A conclusion.

The Court: Overruled.

Defense Counsel: Exception.

Q. What is the answer? A. Yes, sir.

7292

By the Court:

Q. Is that between the river and the highway?

A. It is off the highway.

Q. There are two sides to the highway. Is it towards the river? A. No, the hill side.

Q. It is west of the highway? A. It is on the left-hand side of the highway.

Q. Going north? A. Going into Milton proper, into the town of Milton.

Q. Do you know Jim Conklin's stand and farm? A. No, sir.

7293

The Court: All right.

By Mr. Turkus:

Q. Were you hiding out—

The Court: Pardon me just a minute.

By the Court:

Q. Before you get into Milton proper, the old

7294

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highway branches off. There are remnants of it there. Do you know what I mean? A. I don't know much about the old highway.

Q. You mean that this is left of the concrete highway? A. Yes, sir.

The Court: All right.

By Mr. Turkus:

7295

Q. While you were hiding out in this farm in Milton, New York, were you arrested there? A. Yes, sir.

Q. And were you brought to the Grand Jury of Queens on a charge? A. Yes, sir.

Q. Can you recall when that was? A. (No answer).

Q. I see you hesitate so I suggest the month of October, 1936. Does it refresh your recollection? A. October 8, 1936.

Q. Before January 1, 1940, had you ever been convicted of any crime? A. No, sir.

7296

Q. During the month of March, 1940, were you arrested in Brooklyn and convicted by the District Attorney's office of the crime of vagrancy? A. Yes, sir.

Q. To date, is that the only conviction that stands against you? A. Yes, sir.

Q. Were you sentenced to a jail? A. Yes, sir.

Q. What jail were you sent to? A. The Riker's Island Penitentiary.

Q. Did you serve your sentence? A. Yes, sir.

Q. How long did you get on that vagrancy conviction? A. Two months.

Q. Were you actually released from Riker's

Island Penitentiary? Did you get as far as the street? A. No, sir.

Q. Or the warden's office? A. The warden's office.

Q. Did you reach the warden's office on the last day of your sentence on the vagrancy charge? Do you understand me? A. You will have to explain that.

Q. Well, had you served your sentence and were you brought into the warden's office preparatory to going out on the street? A. Yes, sir.

7298

Q. Were you arrested again? A. Yes, sir.

Q. Then and there? A. Yes, sir.

Q. Were you taken to a jail? A. Yes, sir.

Q. What jail? A. The Raymond Street Jail.

Q. So that you had actually not set foot out on to the street after that conviction? A. That is right.

Q. You say you were brought to Raymond Street Jail, is that correct? A. Yes, sir.

Q. From Raymond Street Jail were you taken to some county other than Brooklyn? A. Yes, sir.

7299

Q. Other than Kings? Where were you taken? A. To the Bronx.

Q. In the County of Bronx did you see District Attorney Foley? A. Yes, sir.

Q. This question you are permitted to answer only yes or no: Did District Attorney Foley speak to you in the Bronx? A. Yes, sir.

Q. Likewise did Assistant District Attorney Edward Breslin of the Bronx speak to you? A. Yes, sir.

Q. This question, too, you can only answer yes or no: Did you speak to District Attorney Foley

7300

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and Assistant District Attorney Breslin of the Bronx? A. Yes.

Q. After that were you removed from the Raymond Street Jail in Brooklyn? A. Yes, sir.

Q. Were you put in the custody of the New York City Police Department? A. Yes, sir.

Q. Were you taken to another institution? A. Yes, sir.

Q. What is the name of that institution? A. Bronx County Jail.

7301

Q. Are you segregated from other prisoners? Do you know what "segregated" means first? A. Yes, sir.

Q. Are you segregated from other persons? A. Yes, sir.

Q. Are you still kept in this Bronx County Jail? A. Yes, sir.

Q. You have already told us that you knew Mendy Weiss, Louis Capone, Pittsburg Phil Strauss, and Abie Reles. Is that correct? A. Yes, sir.

7302

Q. Directing your attention to the fall of 1938, did you see Mendy Weiss, Louis Capone, Strauss and Reles together at a certain place? A. Yes, sir.

Q. Where did you see them together? A. At the corner.

Q. And when you say "the corner" do you refer to the corner of Saratoga and Livonia Avenues? A. Yes, sir.

Q. Was that corner known by you and others as "the corner"? A. Yes, sir.

Q. At that time and place did you receive an assignment?

Mr. Rosenthal: I object to it.

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7303

Mr. Talley: I object to it, calling for a conclusion.

The Court: Overruled.

Defense Counsel: Exception.

A. Yes, sir.

Q. Who spoke to you? A. Weiss.

Q. Did Weiss speak to you in the presence of Capone, the defendant Capone, Harry Pittsburg Phil Strauss, and Abie Reles? A. Yes, sir.

7304

Mr. Rosenthal: I object to that.

Mr. Barshay: Just another objection, your Honor, on the defendant Buchalter's part.

The Court: What date was that?

Mr. Turkus: The fall of 1938.

Mr. Rosenthal: Two years after the alleged crime. I object to it on the ground it is immaterial.

Mr. Turkus: The relevancy and materiality—

The Court: That is overruled. What is your objection, Mr. Barshay?

7305

Mr. Barshay: My objection is on the ground that the defendant Buchalter, not being present, certainly is not binding upon him.

The Court: Overruled.

Defense Counsel: Exception.

Q. What did the defendant Mendy Weiss say to you in the presence of the defendant Louis Capone, and Strauss and Reles?

Mr. Rosenthal: I object.

7306

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The Court: Overruled.

Mr. Talley: Objected to on the ground it is two years after the alleged crime named in the indictment, too remote, and immaterial, irrelevant and incompetent.

The Court: Overruled.

Mr. Barshay: With respect to Buchalter on the grounds heretofore urged by me.

7307

The Court: Is this on the subject of spoliation?

Mr. Turkus: Yes, sir.

The Court: I assumed it was. Overruled.

Defense Counsel: Exception.

(Pending question read.)

7308

A. He says, "Go to Ratner's restaurant tomorrow morning and meet Paul Berger and another fellow. He will point out Rubin, Max Rubin, and you tail him and find out all his habits and see if he has a police bodyguard with him."

Mr. Barshay: I move to strike out the answer on the ground it is not binding on the defendant Buchalter and on the ground that it is evidence of another crime not connected with him, and on the further ground with respect to him there has been no attempt to prove spoliation chargeable directly to him in this case.

The Court: At the present time it would apply only to Capone, but the Court cannot tell with whom else it may be con-

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7309

nected before the end of the trial, so at this time I will overrule the objection.

Mr. Turkus: It applies to the defendant Weiss, too.

The Court: Pardon me?

Mr. Turkus: And Capone.

The Court: Wait just a minute.

Mr. Rosenthal: Let the Judge rule, not you.

Mr. Turkus: I am stating the District Attorney's position in the offer of evidence.

7310

The Court: Will you correct me if I am wrong? My notes say—and of course I am a little behind the questioning in my notes always—about the fall of 1938 Weiss spoke to him in the presence of Capone, Strauss and Reles. You mean Weiss was there, too?

Mr. Turkus: Weiss was the speaker. Weiss was the one who gave him the assignment and gave him the instructions.

The Court: That is right.

Mr. Talley: According to his testimony.

The Court: O. K.

7311

Mr. Rosenthal: Your Honor mentioned defendant Capone. Does that ruling of your Honor hold, in view of the fact that it now appears that the defendant Weiss is supposed to have done the talking, not Capone?

The Court: Now you are going to get the Court in a corner. I have quoted evidence. I am not going to fall into that little trap. Objection overruled.

7312

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Mr. Rosenthal: I object on behalf of the defendant Capone on the ground it is not binding upon him.

The Court: Overruled at this time.

Mr. Rosenthal: Exception.

Mr. Talley: I object to it as an attempt on the part of the District Attorney to introduce evidence having to do with a crime separate and distinct from that named in the indictment.

7313

The Court: Overruled. The applicability will be dealt with at the proper time in the charge.

Q. Before the Court's ruling, you had told us in substance what Weiss told you in connection with tailing Max Rubin. Were you told the purpose of tailing him?

Mr. Rosenthal: I object to that as leading and suggestive.

7314

The Court: He can say whether or not Weiss told him anything else. That is leading. Sustained.

Q. Did the defendant Weiss tell you anything else?

Mr. Talley: I make the same objection as to the last question.

The Court: Overruled.

Mr. Talley: Exception.

A. Yes, sir.

Q. What else did Weiss say? A. He says, "After you find out what is what, come back

on the corner and we'll see what we have to do."— Not in those words but to that effect.

Q. At that time, when you received those instructions, did you know Paul Berger? A. Yes, sir.

Q. Where had you met him, if you can remember, before you were told by Weiss to meet him in Ratner's restaurant? A. On the corner.

Q. On the corner? A. Yes, sir.

Q. After the defendant Weiss gave you those instructions, what did he do? After he told you this that you have just told the jury, to meet Berger in Ratner's restaurant, and the other instructions, what did Weiss do? A. I don't know. I left the corner.

7316

Q. Before you left the corner, did you have any talk with either Capone, Reles, or Strauss? A. Not that night.

Q. Are you sure that that very night, when you got the instructions, that you did not have a talk with either Capone, Reles or Strauss?

Mr. Rosenthal: I object to the question on the ground it is already answered. It is repetitious.

7317

The Court: Overruled.

Mr. Rosenthal: I respectfully except. It is both leading and suggestive.

(Pending question read.)

Mr. Rosenthal: Might I add the further ground, it is an attempt to impeach his own witness.

Mr. Turkus: We will worry about that if we have to come to it.

The Court: The effect of this is to confuse and cause constant repeating of

7318

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the question by the stenographer. When counsel has an objection, he should state it completely and be done with it. Once more, the stenographer will repeat the question. Objection overruled.

Mr. Rosenthal: Exception.

(Pending question read.)

A. Yes, sir.

Q. With which one did you have the talk?

7319

The Court: He said he did not.

Mr. Turkus: He said he did.

The Court: He said he is sure he did not.

Q. What do you mean by "yes", that you did or did not?

Mr. Rosenthal: I object to the question.

The Court: He said and he has made clear, he did not have a talk with one of them that night at that corner.

7320

Mr. Turkus: I want to pursue it.

Mr. Rosenthal: I have an objection before the Court.

The Court: Objection to what?

Mr. Rosenthal: To his pursuing it or to an answer to the question.

The Court: There is no question before the Court. (to witness) Did you have a talk with one of them later?

The Witness: The next night.

The Court: Go ahead from there.

Q. I want to go back to that conversation that you had with Mendy Weiss, where you got your instructions to go to Ratner's Restaurant, and ask you specifically, were you told the purpose of tailing Rubin?

Mr. Rosenthal: I object to it, if your Honor pleases, upon the ground that it is answered twice; it is repetitious, and now it is leading and suggestive.

The Court: Overruled.

Mr. Rosenthal: Exception.

7322

The Court: By anybody? You have told us that it was said, in effect, that after you find out what is what, "Come back on the corner and we will see what we have to do." Was anything else said?

The Witness: Not then.

Q. Were you told the time that you were to be at Ratner's Restaurant?

Mr. Rosenthal: I object to that as leading and suggestive. The witness should be permitted to exhaust his recollection of any alleged conversation before he is led by the District Attorney.

7323

The Court: Overruled.

Mr. Rosenthal: Exception.

A. Yes, sir.

Q. Did you go to Ratner's Restaurant the next day after that talk? A. Yes, sir.

Q. In between the time you got your instructions to go to Ratner's Restaurant the following

7324

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morning, did you see either Capone, Reles, or Strauss? A. Will you repeat that question?

(Pending question read.)

Q. Do you understand it? A. Yes, sir.

Q. Did you? A. I don't recollect.

Q. Did you the following morning go to Ratner's Restaurant? A. Yes, sir.

7325

Q. Approximately what time did you go, if you can remember? A. About 9:30 or 10:00—around that time.

Mr. Cuff: May we have the date fixed?

Mr. Turkus: This is the fall of 1938.

Mr. Cuff: That is not definite.

Mr. Turkus: Then you take care of it on cross.

Mr. Cuff: I am asking the Court if we may have the time fixed by the witness, not by the District Attorney.

The Court: Overruled.

7326

Q. Where was this Ratner's Restaurant located, if you can remember? A. On Delancey Street.

Q. Did you meet anybody in Ratner's Restaurant? A. Yes, sir.

Q. Whom did you meet there? A. Paul Berger and another fellow.

Q. This other fellow, were you introduced to him? A. Yes, sir.

Q. Who introduced you to him? A. Paul Berger.

Q. What is the name of this other fellow you were introduced to? A. Cuppie.

Q. Do you know Cuppie's true or right name?

A. Yes, sir.

Q. What is it? A. Jack Migden.

Q. Did you, Berger, and Cuppie do anything in Ratner's Restaurant? A. Yes, sir.

Q. What did you do there? A. Ate.

Q. During the course of the meal, did the three of you speak together? A. Yes, sir.

Q. Answer this question yes or no: Did you speak about Rubin? A. Yes, sir.

Q. After the meal was over and the talk was over, did the three of you leave the restaurant? A. Yes, sir.

7328

Q. Did you see where Berger went? A. Yes, sir.

Q. Where did he go? A. He went in his car with Cuppie.

Q. When you say "his car" do you mean Berger's car? A. Yes, sir.

Q. When Berger and Cuppie went together in a car, where did you go? A. I went in my car and I followed them.

Q. Had that matter been discussed in the restaurant? A. Yes, sir.

7329

Q. Can you remember now where Berger parked the car in which he and Cuppie were riding? A. Around Union Square.

Q. When that car was parked around Union Square, where did you park your car, if you can recall? A. Right near his car.

Q. After the cars were parked, did Berger say something to you and Cuppie? A. Yes, sir.

Q. What did Berger say to you and Cuppie?

Mr. Rosenthal: I object.

7330

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Mr. Talley: Objected to, incompetent, irrelevant, immaterial, not in the presence of any of these defendants, in no way binding upon any of them.

The Court: Overruled.

Mr. Talley: Exception.

(Pending question read.)

7331

A. He says, "I will walk first and Cuppie and you follow me, and as soon as I see Max Rubin I will point him out."

Q. Did Berger walk first? A. Yes, sir.

Q. And where did he walk? On what street or avenue, if you can remember? I do not want the route, but ultimately what streets did he walk along? A. He walked up—I think it was—16th Street or 17th Street—17th Street.

Q. And did he walk down that street to an avenue? A. Yes.

Q. What Avenue? A. Fifth Avenue.

7332

Q. When Berger walked down to that place, 17th Street and 5th Avenue, as you recall it, what did you and Cuppie do? A. Followed Paul Berger.

Q. At or about 5th Avenue and 17th Street, did Berger say anything to you? A. Yes, sir.

Q. In what tone of voice did he say it? A. In a whisper.

Q. What did Berger whisper?

Mr. Rosenthal: I object to it.

The Court: Overruled.

Mr. Rosenthal: Exception.

A. He says, "That is Rubin on the other side,

the fellow in the blue suit with a crooked neck, and I think it is the law with him."

Q. When he said, in words or substance, "There is Rubin, the guy with the blue suit and the crooked neck, and I think it is the law with him," was there a man standing near the person that Paul Berger pointed out as Max Rubin? A. Yes, sir.

Q. What is meant by "the law"? A. A policeman.

Q. At that time when Paul Berger whispered what you have just told the jury about Rubin and the law, where was Rubin standing? A. On the other corner.

7334

Q. Do you mean by that across the way? A. That is right.

Q. Did that man have a bent or crooked neck that he pointed out? A. Yes, sir.

Q. After Berger whispered this to you, did he keep on walking? A. Yes, sir.

Q. After Berger walked off after having whispered what you have told the jury, to you, did you remain? A. Yes, sir.

7335

Q. What did Cuppie do? A. He remained with me.

Q. What did you and Cuppie do in connection with Rubin? A. We followed Rubin all afternoon.

Q. All afternoon did the man that you had seen with him on the corner when Berger whispered, "Maybe it's the law," or "It is the law"—whichever he said—did that man remain with Rubin all afternoon? A. Yes, sir.

Q. Did there come a time when Rubin and that man went into a subway? A. Yes, sir.

7336

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Q. Can you give us an approximate time when that was that afternoon? A. Approximately 4:30.

Q. What subway did Rubin and the man with him enter? A. 14th Street and 7th Avenue.

Q. When Rubin and this man went into the subway, what did Cuppie do? A. He went after them.

Q. And what did you do? A. I went back to Brooklyn.

7337

Q. Now, that night did you go to the corner, namely Saratoga and Livonia Avenue? A. Yes, sir.

Q. That night whom did you see at the corner? A. Weiss, Capone, Strauss and Reles.

Q. Was there a talk on the corner between all of you? A. Yes, sir.

Q. What was said at the corner that night, and by whom?

7338

Mr. Talley: I object to it, if your Honor pleases, upon the ground that this is evidence apparently tending to attempt to prove a crime separate and distinct from that named in this indictment, being incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Talley: Exception.

Mr. Rosenthal: I make the same objection and take the exception.

Mr. Barshay: All counsel.

The Court: Overruled.

Defense Counsel: Exception.

(Pending question read.)

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7339

A. Weiss spoke to me. He said, "Tomorrow morning put on old clothes and here is Rubin's home address and go up there and watch his house, see who he comes out of the house with, how he walks over to the subway, who walks with him, and so forth."

Q. Now, when he said, "Here is his address," did he give you anything? A. Yes, sir.

Q. What did he give you? A. An address.

Q. Can you remember what the address was?

A. It was some address on Gunhill Road.

7340

Q. In the Bronx? A. In the Bronx.

Q. Was that said by Weiss to you in the presence of Capone?

Mr. Rosenthal: I object to it.

A. Yes, sir.

Mr. Rosenthal: And ask that the answer be stricken.

The Court: Overruled. Denied.

Mr. Rosenthal: Exception.

The Court: How close was Capone?

7341

The Witness: In the group.

The Court: How close? We want to know if he could hear?

The Witness: Yes, sir.

Mr. Rosenthal: I ask that that be stricken.

The Court: Strike out that he could hear. The jury has to judge if he could hear.

The Witness: A foot away.

The Court: All right.

7342

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Q. When you were told to go up to this address in Gunhill Road, what else, if anything were you told about the following morning?

Mr. Rosenthal: That is objected to as inferring that something else was told, leading and suggestive.

The Court: Overruled.

Mr. Rosenthal: Exception.

Mr. Talley: Same objection.

The Court: Overruled.

Mr. Talley: Exception.

The Court: Anything else told?

The Witness: Yes, sir.

7343

Q. What else was said? A. I was told that, "After you find out—"

The Court: By whom?

The Witness: Weiss.

The Court: Go ahead.

7344

A. (Continued) "After you find out what is what, see me at a saloon on Grand and some other street there."

Q. Was anything else said in connection with what you were to do the next morning up at Gunhill Road? A. Yes, find out all his habits, I would say.

Q. How were you dressed when Weiss was telling you this at Saratoga and Livonia Avenues? What type of clothes? I know you cannot remember the color, but what type of clothes did you have on then? A. A suit.

Q. Was anything else said about what you

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were to do the following morning at Gunhill Road?

Mr. Talley: Same objection, if your Honor pleases.

Mr. Rosenthal: It has been answered twice, repetitious.

The Court: Overruled.

Defense Counsel: Exception.

The Court: Go ahead.

7346

A. No, sir.

Q. Did you go to Gunhill Road the following morning? A. Yes, sir.

Q. Did you go in your suit? A. No, sir.

Q. What did you go in? A. I went in other clothes.

Q. Was anything said the night before about the other clothes? A. Yes, sir.

Q. All right. That is what I want to hear about.

Mr. Rosenthal: I object to what the District Attorney wants to hear and I ask that the interjection be stricken out.

7347

Mr. Turkas: I consent to it that it be stricken. I am sorry I said it.

The Court: What other clothes did you wear?

The Witness: I wore overalls, a lumber jacket, old pants, a slouch hat, and he says, "Use a pipe."

Q. Who said, "Use a pipe"? A. Weiss.

Q. What kind of a pipe are you referring to?
A. A smoking pipe.

7348

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Q. That is the kind you put tobacco in? A. Yes, sir.

Q. And were you told that the night before? A. Yes, sir.

Q. And was that in the presence of Capone? A. Yes, sir.

Q. The following morning, after getting the instructions, did you put on that outfit which you have related to the jury? A. Yes, sir.

7349

Q. Dressed in that outfit, what time approximately did you arrive at Gunhill Road in the Bronx? A. About six o'clock the following morning.

Q. At six o'clock or approximately then that morning, what did you do when you got there in this outfit, at Gunhill Road? A. I parked my car and walked opposite Rubin's house and sat on the curb and was watching his house.

Q. As you sat there on the curb in that outfit, did you see somebody come out of Rubin's house? A. I seen a lot of people come out of Rubin's house.

7350

Q. In addition to the other people that came out, did Rubin come out? A. Eventually he came out.

Q. Did he come out alone? A. No, sir.

Q. Who came with him? A. A police bodyguard.

Q. Did you observe what Rubin and the police bodyguard did that morning? A. Yes, sir.

Q. What did you see the police bodyguard and Rubin do that morning? A. Walked to the subway and Gunhill Road.

Q. Did they enter the subway? A. Yes, sir.

Q. After they went into the subway, what did you do? A. I hung around there.

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7351

Q. How long did you hang around? A. All day.

Q. After hanging around all day, did you see Rubin again? A. Yes, sir.

Q. Approximately when was that? A. Approximately five o'clock.

Q. Was he alone then when you saw him? A. No, sir.

Q. Who was with him, do you know? A. The same man.

Q. What did you see Rubin and this man do? A. Go into that house.

7352

Q. Did anybody come out of that house? A. Yes.

Q. Who came out? A. The man.

Q. How long after Rubin and the man had gone was it that the man came out? A. A few minutes.

Q. In conformity with Weiss's instructions, did you go to a saloon?

Mr. Talley: Object, if your Honor please, to the form of the question.

The Court: Sustained.

7353

Q. Did you that evening go to a saloon? A. Yes, sir.

Q. Do you know where that saloon was located? A. On Grand Street.

Q. East Side of Manhattan? A. Yes, sir.

Q. Do you know the other street? A. I think it was Lewis Street.

Q. Did you there at that saloon see one of the defendants? A. Yes, sir.

Q. Which one? A. Weiss.

Q. Did Weiss ask you a question?

7354

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Mr. Talley: I object, if your Honor pleases, upon the ground already stated, to this line of inquiry; has to do with an offense not named in this indictment.

The Court: Overruled.

Mr. Talley: Exception.

(Pending question read.)

A. Yes, sir.

Q. What did he ask you?

7355

Mr. Rosenthal: I object to it.

Mr. Talley: Same objection I made.

The Court: Overruled.

Defense Counsel: Exception.

A. He said, "What happened?"

Q. Did you tell him? A. Yes, sir.

Q. After you told him what had happened up there in the Bronx, did Weiss say anything else?

A. Yes, sir.

Q. What did he say? A. He says, "Go back to Brooklyn and see Harry Strauss, and he will give you further instructions."

7356

Q. Did you go back to Brooklyn that night?

A. Yes, sir.

Q. Did you go to the corner? A. Yes, sir.

Q. Whom did you see at the corner? A. Strauss, Capone, and Reles.

Q. At that corner where you saw Strauss, Capone, and Reles, was there a talk? A. Yes, sir.

Q. Tell us who spoke and what was said.

Mr. Talley: Same objection, if your Honor pleases.

The Court: Overruled.

Mr. Talley: Exception.

A. Strauss spoke and he said, "What happened up there?"

Q. Was this in the presence of Capone and Reles? A. Yes.

Q. Were you all close to one another when you were talking? A. Yes, sir.

Mr. Rosenthal: I object to it, leading and suggestive.

7358

The Court: He can say how close they were.

Mr. Rosenthal: Is the question withdrawn, or is there a ruling on it?

The Court: Sustained.

Q. State where you were in proximity to one another. Do you know what that means?

A. Yes, sir.

Q. All right, tell us. A. About arm's length away from one another.

Q. Continue to tell us what was stated there.

7359

A. He asked me, "What happened up there?" and I explained to him exactly what happened. He says, "Well," he says, "go up there again tomorrow morning and watch him again and stay around there until about 7:30 and see if he comes out of the house after supper; if he does come out of the house, where he walks to and with whom."

Q. At that time did Capone say anything? A. Yes, sir.

Q. What did he say? A. He says, "That

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Rubin is hurting Lep, and we got to hit him in the head—

Mr. Barshay: I move to strike it out—

A. (continued) —and get rid of him.”

Mr. Turkus: Let him finish, please.

Q. Continue. “That Rubin is hurting Lepke”
— A. ‘And we have to hit him in the head and get rid of him.’”

7361

Mr. Barshay: I move to strike it out as not binding on the defendant Buchalter.

The Court: Denied.

Mr. Barshay: Exception.

Q. Did you agree to continue your job? A. Yes, sir.

Q. As you walked away, did Capone say and do anything?

7362

Mr. Rosenthal: I object to the continuous leading and suggesting to this witness.

Mr. Turkus: There were other people there in conversation, Judge.

The Court: What was the question?

(Pending question read.)

The Court: Overruled.

Q. Do you understand the question? A. Yes, sir.

Q. All right, did he? A. No, sir.

Q. At any time in the talk, did anybody use the word "luck"?

Mr. Rosenthal: I object to leading and suggesting.

The Court: Overruled.

Mr. Rosenthal: Exception.

A. Not then.

Q. When was that word used?

Mr. Rosenthal: I object to it.

The Court: Overruled.

Mr. Rosenthal: Exception.

A. The next night.

Q. Did you continue on the job of watching the movements of Rubin? A. Yes, sir.

Q. How many days after that night was it that you continued to watch him? A. Oh, about three more days.

Q. And while you were watching him for those times, how were you dressed? A. In those overalls that I spoke about.

Q. I am calling your attention now to the last day of the watch. What time, if you can recall, did you arrive out in the vicinity of Gunhill Road? A. Early in the morning.

Q. Were you dressed in those overalls and the rest of that outfit that you described to the jury, on that occasion? A. Yes, sir.

Q. Dressed in that outfit, where did you keep yourself in relation to Rubin's house? A. Across the street from Rubin's house.

Q. And what were you doing there while you

7366

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were waiting for Rubin that morning? A. Sitting on the curb.

Q. While you were sitting on the curb, did somebody come over and question you? A. Yes, sir.

Q. Who? A. A policeman.

Q. Was it a policeman in uniform? A. Yes, sir.

Q. What did the policeman in uniform say to you?

7367

Mr. Rosenthal: Objected to.

The Court: Sustained.

Q. Did the policeman in uniform—and answer this only yes or no—ask you questions? A. Yes, sir.

Mr. Rosenthal: Objected to.

The Court: That is what he says.

Q. Did you make answers? A. Yes, sir.

Q. Did the policeman go away? A. Yes, sir.

7368

Q. Did you see Rubin come out of the house?

A. Yes, sir.

Q. Keep on tailing him? A. Yes, sir.

Q. After that incident with the policeman that you have told us about, did you go to the corner, namely, Saratoga and Livonia Avenues? A. Yes, sir.

Q. Was it that night? A. Yes, sir.

Q. Whom did you see on the corner that night?

A. Weiss, Capone, Reles, and Strauss.

Q. Did you speak to any one of these defendants on trial? A. Yes, sir.

Q. Which one? A. Weiss.

Q. What did you tell Weiss?

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7369

Mr. Rosenthal: I make the same objection.

Mr. Talley: I object to it, if your Honor pleases, on the ground already stated.

The Court: Overruled.

Defense Counsel: Exception.

Mr. Barshay: My general objection still holds good, I take it!

The Court: Yes.

Mr. Barshay: Exception.

7370

(Pending question read.)

A. I told him once more that he has a guard with him at all hours, at all hours that I was there; he walks out of the house with the guard and back into the house with the guard; he has the bodyguard with him at all times.

Q. Had you ever seen Rubin leave the house by himself? A. No, sir.

Q. And from your observation of him, had he always been with the bodyguard every time that you saw him? A. Yes, sir.

7371

Q. When you told that to Weiss, that he was always in the company of the cop or the bodyguard, what did Weiss say?

Mr. Talley: Same objection.

The Court: Overruled.

Mr. Talley: Exception.

A. He said, "Then we will have to whack him and the cop."

Q. After Weiss said about what would have to happen to Rubin and the cop, did you say

7372

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anything about the incident of the policeman?

A. Yes, sir.

Q. What did you say? A. I explained what happened, that I was stopped up there that morning and questioned off a cop.

Q. Did you tell them what the cop asked you?

A. Yes.

Q. And did you tell him what you said to the cop? A. Yes, sir.

7373

Mr. Rosenthal: I object to the form of the question, "Did you tell them?"

The Court: He said he was talking to Weiss and has not made clear how closely together they were.

Q. How close—

Mr. Rosenthal: Just a minute. I have an objection.

The Court: Sustained.

7374

Q. How close together were you, Mendy Weiss, Capone, Strauss, and Reles, when this talk went on? A. All in a huddle.

Q. And were you in a huddle when Weiss said about watching Rubin and the cops? A. Yes, sir.

Q. And were you in a huddle when you made your report as to what you had seen up in the Bronx in connection with Rubin and the cop? A. Yes, sir.

Q. Tell us what you said in that huddle to them in relation to your experience with the uniformed police officer that stopped you and questioned you.

Mr. Rosenthal: I again object to the form of the question.

The Court: Overruled.

Mr. Rosenthal: Conversation he said was with Weiss. Exception.

(Pending question read.)

The Court: Technically, I think Mr. Rosenthal is right.

Mr. Turkus: I will withdraw it in that form.

The Court: He has placed them all within apparent hearing distance. The conversation was with Weiss.

Mr. Rosenthal: Does your Honor then sustain the objection?

The Court: Yes.

Q. Tell the court and jury what you said about that incident. A. I told him that as I was sitting on the curb a police officer walked over to me and he saw me sitting there, and says, "What are you doing here?" I says, "I am a plumber and i work upstairs and I am waiting for my boss." So he says, "Well, leave it go for a while, drop it for a while."

Q. Who said, "Leave it go for a while," then? A. Weiss.

Q. Now, at the time when this police officer asked you the questions, were you dressed up in that outfit? A. Yes, sir.

Q. And when you indicated the house that you were waiting for your boss to show up, what house did you point out, in relation to where Rubin's house was? A. Across the street.

Q. I am going to direct your attention to the

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month of April, 1939, and ask you if in April, 1939, you saw the defendant Capone. A. Yes, sir.

Q. Did Capone in April, 1939, speak to you with reference to a man named Friedman? Yes or no?

Mr. Rosenthal: I object to it.

The Court: Overruled.

Mr. Rosenthal: Exception.

(Pending question read.)

7379

A. Yes.

Q. Answer this question, only yes or no, and no other disclosure: Were you given an assignment with reference to a man named Friedman?

Mr. Rosenthal: I object to the question.

The Court: The word "assignment" is objectionable. Sustained.

Q. Were you told to do something with reference to a man named Friedman?

7380

Mr. Rosenthal: I object to the question.

The Court: Overruled.

Mr. Rosenthal: Exception.

A. Yes, sir.

Q. After that conversation did you see Capone again? A. Yes, sir.

Q. How many days later? A. A few days later.

Q. Where did you see Capone a few days later? A. I went over to his house.

Q. Do you remember where Capone's home was located then? A. I think it was Avenue K.

Q. Did you see Capone at his home? A. Yes, sir.

Q. Do you remember where in his home you spoke with him, what room? A. The parlor.

Q. In the parlor did you ask Capone a question? A. Yes, sir.

Q. What did you ask him?

Mr. Rosenthal: I object to it.

The Court: Overruled.

Mr. Rosenthal: Exception.

7382

A. I asked him if he thought it was advisable that I work on the Friedman thing because I hung out about a block away and I thought I would be recognized.

Mr. Rosenthal: Is that the finish?

Q. Is that the finish of the question that you put to him, that you said to Capone? Is that what you said to Capone? A. Yes, sir.

Q. Did Capone answer you?

7383

Mr. Rosenthal: I object to it and ask that the answer be stricken. At this time I move for the withdrawal of a juror.

Mr. Barshay: In that motion counsel for Buchalter joins.

Mr. Talley: Weiss joins in that motion, if your Honor pleases.

The Court: I am trying to place who Friedman was.

Mr. Turkus: That is no concern of the

7384

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jury at this time, as far as the District Attorney is concerned.

The Court: On what theory is it offered?

7385

Mr. Turkus: The next part of the conversation, which is so interwoven with that, will be the competent part against Capone. I don't want to make any disclosure. I want it to come from the witness. I don't want anybody to say I suggested anything. It is inextricably wound up with it so that you cannot part it. It has got to be brought out that way. Mr. Klein and I have given it considerable thought before putting the question, and it is the only way it can be done.

7386

Mr. Rosenthal: If there is any question of law involved, in pursuance to your Honor's former policy, I think it should be discussed by both the Court and counsel without the presence of the jury. That seems to have been the policy that has been formulated during the trial,—with all due deference to the intelligence of both Assistant District Attorneys, their thought and deliberation being the ruling of the Court or even being impressed as a proper method of examination, insofar as I am concerned. I think we should be let in on the secret.

Mr. Turkus: You will be let in very quickly.

Mr. Rosenthal: Just a minute, Mr. Turkus.

Mr. Turkus: I object to any such im-

plication about a secret. There is nothing secret here. We will expose everything—no secrets.

Mr. Rosenthal: I thought your Honor had ruled that we discuss with the Court and not with Mr. Turkus or one another and we would get along very nicely.

The Court: The policy of the Court is always not to talk with counsel arguing but wait patiently until the discussion ends and then try to put in a word or two.

7388

Mr. Rosenthal: If there is any question—

The Court: Will you wait just a minute, please? Offhand, the impression given is that this is inter alios but I don't want any error here. The jury is excused for a few minutes.

(The jury retired from the court-room.)

The Court: What is this all about, now that the jury is out?

Mr. Turkus: When the witness spoke to Capone about the advisability of working on the Freedman thing, which is the word in the testimony, Capone's next words are the words that tie him up by an admission.

7389

Mr. Cuff: May we have the witness excused, Judge?

Mr. Turkus: Certainly, I have no objection.

The Court: Let the witness be excused.

(The witness leaves the court-room.)

7390

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Mr. Turkus: Without going into the exact language, Capone then said there was, in substance, nothing to worry about and made the admission which puts him into the Rosen killing. That is what will be developed. The answer is so wound up with that conversation that you cannot take some of it away and put the rest of it in because it will be completely without sense and understanding.

7391

Mr. Rosenthal: The only thing that is lost sight of is the fact that the witness Allie Tannenbaum has already testified in the presence of this jury that a man by the name of Whitey Freedman, whom he now identifies, Mr. Turkus, in the form of the question—was shot and killed or in some way was killed—I do not know whether he was shot or what happened but in any event that he was killed, and that is in this record.

7392

Mr. Turkus: Will your Honor understand this—

Mr. Rosenthal: This question which has been formulated already in the presence of this jury, first in the form which was objectionable and ruled out by your Honor, namely, were you given an assignment in respect to this particular individual, is already prejudicial to the rights of this defendant and is calling into this trial something which should not be developed, which is accusing this defendant of another crime or participation in another crime.

Mr. Turkus: Let me say this. This

witness did not mention—let me get the record straight. There is a serious charge there as if the District Attorney did something improper and while defense lawyers have a lot of latitude, still somebody has a sense of feeling in the matter. Freedman is a very common name. It has three different spellings. Nothing was extracted from this witness as to it being Whitey Freedman or any victim of a homicide. As a matter of fact I took every precaution I could that that would not be brought out into the case; that was the purpose of the language used, but the Freedman incident is so interwoven with Capone's admission of guilt in the Rosen case, it is so inextricably interwoven, that you cannot bring it out any other way so that is the problem that we in the District Attorney's office had and this is the only way we could meet it.

7394

The Court: Naturally I don't remember the use or connection of use of the word "Freedman" in the record because it is not a constituent part of this case. It is purely atmosphere, purely incidental and I assume that the memories of the members of the jury are as bad as that of the Judge, and no prejudice has been done. But will you kindly tell me precisely what you expect this witness to answer to that question?

7395

Mr. Turkus: How far did he go?

The Court: You know every detail.

Mr. Turkus: I want to see how far we

7396

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got and then I will tell you what is going to happen next, according to what I anticipate.

The Court: The admission that will link up Capone, you said.

7397

Mr. Turkus: Well, Capone is going to admit his part in the Rosen killing, tell him what is he worrying about, he worked on the Rosen job and he hung around there and nobody made him, so what is this fellow worrying about. I cannot tell you the exact language he is going to use, but that, in substance, is the way it is going to be.

Mr. Rosenthal: May I address the Court, if that is supposed to be the purpose?

The Court: Will you wait just a moment?

Mr. Rosenthal: Yes, sir.

7398

The Court: What are the words that you claim were used in reference to Capone on the Rosen job, I mean Capone's words?

Mr. Turkus: I have made a memorandum.

The Court: Let me know what it is.

Mr. Turkus: The memorandum is this, that he asked him if it is advisable that he should work on this Friedman thing, because he used to hang out a block away from there, just off Sutter Avenue, and that Capone said to him why, and Magoon said he was afraid of being made. Being made is the expression for being identified.

The Court: Don't tell a Judge who has been on the Bench twenty years.

Mr. Turkus: And Capone is supposed to have said to him, in words or substance, what are you worrying about? I worked on the Rosen thing right on Sutter Avenue and I was not made. I hung around there, too. What are you worrying about, being made? Magoon said, in words or substance, I am not worried about it. I just want to let you know and get your advice. That is all the conversation.

7400

The Court: I will hear Mr. Rosenthal.

Mr. Rosenthal: Even assuming that such a thing was said, the very following conversation alleged to have emanated from Capone would substantiate the statement which I originally made to your Honor, that it is an attempt to prove guilt of another crime, namely the Friedman crime, because if, as he says, the alleged admission relates to the Rosen killing and says, "What are you worrying about Friedman for?", and already having the testimony here in the form of one or more witnesses the fact that Friedman was killed, it definitely is putting this defendant on trial for a crime which he is not charged with in the indictment.

7401

Mr. Turkus: No, that is not a proper analogy.

Mr. Rosenthal: No?

Mr. Turkus: No, there was nothing brought out—

The Court: Bring in the jury.

7402

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Mr. Barshay: Is there any need for any urging the ground? I am moving for a mistrial.

The Court: I am not telling counsel what is their job.

7403

Mr. Rosenthal: May I just add one more thing before the jury comes back? I understand from other counsel, which I did not know, that this man is charged with the Friedman killing and they are going to bring it out cross-examination, which would make the error still more harmful.

The Court: The Court is prepared to rule.

7404

Mr. Barshay: May I add for the record that Friedman is one of the names mentioned by Mr. Tannenbaum when he said he was receiving instructions, both specific and general, from the defendant Buchalter. That fact may prejudice the jury to a point where they have a right to draw an inference from the question put by Mr. Turkus that this, too, was done at the direction of Buchalter, and it is not offered on the theory of spoliation and is in no wise connected with the Rosen case.

The Court: All I can say is I have no recollection of it and I just hope that the jury has just as bad a memory as I have.

Mr. Barshay: I cannot rely on that hope, your Honor.

The Court: It may not be prejudicial, anyway.

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7405

Mr. Barshay: We have our exception, of course.

(The jury returned to the court room.)

The Court: The objection is overruled

and the motion is denied.

Mr. Talley: Exception to all defendants.

The Court: Bring in the witness.

7406

SEYMOUR MAGOON, resumes the stand:

(Last question read.)

Q. After you asked him that question, did he say anything to you? Did he, Capone, say anything to you? A. I have not finished my answer on that.

Q. Continue. A. I says, "I hung out about a block away and it is sort of off Sutter Avenue."

7407

Q. When you said that, that you hung around about a block away and it is sort of off Sutter Avenue, did Capone say anything to you? A. Yes, sir.

Q. What did he say? A. He says, "What are you worried about?" He says, "I worked on the Rosen thing and it was right on Sutter Avenue and I was not made." I said, "I am not worried, Louie; I am just asking your advice."

Mr. Talley: I move to strike out that

7408

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conversation as having no bearing upon the defendant Weiss, being incompetent, irrelevant and immaterial.

The Court: Denied.

Mr. Talley: Exception.

Mr. Barshay: Same motion with respect to Buchalter and exception.

7409

Q. Earlier in your examination you told us that you had only been convicted heretofore of the crime of vagrancy. Do you recall that? A. Yes, sir.

Q. Nevertheless you have committed other crimes, haven't you? A. Yes, sir.

Q. Have you stolen automobiles? A. Yes, sir.

Q. Approximately how many? A. I could not count them.

Q. Well, can we help you make an estimate? Fifty? More? A. Roughly I will say fifty or better.

Q. Did you participate in the commission of the crime of murder with others, in Brooklyn? A. Yes, sir.

7410

Q. Once in Brooklyn? A. Yes, sir.

Q. Did you participate in the crime of murder in the County of Bronx? A. Yes, sir.

Q. In Brooklyn were you the wheel man on the job? A. Yes, sir.

Q. In the Bronx were you the wheel man? A. Yes, sir.

Q. Did you testify in the case of Plug Shuman here in Brooklyn, in which Irving Knadles Nitzberg was a defendant? A. Yes, sir.

Q. In connection with that homicide, did you deliver the car to Nitzberg and Sheppy Shapiro? A. Yes, sir.

Q. Did you know when you made delivery of the car that it was to be used in a murder? A. No, sir.

Q. Were you asked that question in that trial, in the Nitzberg trial?

Mr. Cuff: Object to that, if your Honor pleases.

The Court: Sustained.

Q. In the matter of one Irving Feinstein who was killed on or about Labor Day, September 4, 1939, did you help one of the defendants in that case get rid of the empty gasoline can which was used to burn the body of Feinstein? A. Yes, sir.

7412

Mr. Turkus: The witness is offered for cross-examination.

Mr. Barshay: I have a motion. I move to strike out this witness' testimony on the ground that it is in no way connected with the defendant Buchalter and is not binding upon him.

The Court: That remains to be seen. Denied.

7413

Mr. Barshay: Exception. I take it, your Honor, that some of the testimony with respect to his activities with Rubin was offered on the theory of spoliation. Your Honor will remember that the period he spoke of was October, 1938, or thereafter, perhaps thereafter, even after December of 1938. Will your Honor recall that the record here is clear that Rubin at that time did not involve the defendant Buchalter in the Rosen case. Conse-

7414

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quently there could be no motive on the part of defendant Buchalter, either through himself or anyone else, to dispose of Rubin in the Rosen case.

The Court: I do not know what this is about. There is nothing before the Court.

Mr. Barshay: It is in support of my motion.

The Court: I thought I had just denied the motion?

7415

Mr. Barshay: That is another ground I urge, your Honor.

The Court. It was denied twice. All right, denied twice.

Mr. Barshay: Exception. No cross on the part of Buchalter.

Cross-examination by Mr. Talley:

Q. Are you known by any other name than Seymour Magoon? A. No, sir.

Q. No? A. No, sir.

Q. Sure about that? A. Yes, sir.

7416

Q. Did you ever give any other name in any court or to public authorities than Seymour Magoon? A. I don't think it was ever in any court.

Q. Where was it that you gave a name other than Seymour Magoon? A. If a police officer stopped me sometimes or I was picked up for something or other, I would give another name.

Q. Were you picked up many times? A. Yes, sir.

Q. How many? A. I could not say exactly.

Q. Would it be as many as the automobiles

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7417

you have stolen, fifty or better? A. No, it would be less.

Q. How much less? A. Oh, I will say about twenty-five times.

Q. And each of those times that you were picked up by police officers, you gave some other names than Seymour Magoon? A. Not at all times.

Q. How many of the 25 times, as best you can remember, did you give false names? A. Probably once or twice.

7418

Q. Is that all? A. Yes, sir.

Q. Then if it was only once or twice, you remember the occasions, don't you, when you gave false names? Give me the first time you gave a name other than Seymour Magoon? A. Will you kindly repeat that question?

Q. Yes, give me the first time when you used a name other than Seymour Magoon? A. I could not very well do that.

Q. You don't remember when it was? A. I don't remember the initial time, but I remember that I have given it on one or two occasions.

Q. All right, I am asking you to tell us either of those occasions. Where was it? When was it?

7419

Mr. Turkus: Objected to. He has already answered.

Mr. Talley: He has not answered.

Mr. Turkus: Will you read the answer to Judge Taylor?

The Court: He used the word "initial." I suppose he meant "identical." Do you remember any particular time?

7420

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The Witness: I mean first time, your Honor.

The Court: You may answer. Repeat the question.

(Pending question read.)

Q. Tell us what those occasions were. A. I think once was in Milton, New York, and another time in Brooklyn.

7421

Q. Were you picked up at the tomato farm in Milton, New York? A. Yes, sir.

Q. And what name did you give then? A. If I recollect right, it was Harry Levinson.

Q. Harry Levinson? A. Right.

Q. That is not your name? A. No, sir.

Q. Never was your name? A. No, sir.

Q. And to whom did you give that name? A. To the police officers who broke in on the farm there and asked me my name.

Q. They took you to the police station, didn't they? A. Yes, sir.

7422

Q. And were you taken to any court? A. I don't think that night.

Q. The next day? A. Yes, sir.

Q. Did you give your name there as Harry Levinson? A. I don't think so.

Q. Did you give the name of Seymour Magoon? A. Yes, sir.

Q. When was the next occasion when you used a false name? A. It was some sort of pick-up, if I recollect right, not exactly a pick-up—I was stopped. A few of the fellows were stopped then: "What's your name?" and "What's your name?" and when I was asked my name I told them "Harry Levinson."

Q That was the second time you used the name of Harry Levinson? A. To the best of my knowledge, yes.

Q. And you used the same name on two different occasions, is that right? A. Yes, sir.

Q. You are known as Blue Jaw, are you not? A. No, sir.

Q. Never heard that name applied to you? A. I have read that name.

Q. You have read it? A. Yes, sir.

Q. But you never heard anybody apply it to you? A. No, sir.

Q. You took part in the killing of a man named Irving Penn, didn't you? A. Yes, sir.

Q. That was in the Bronx? A. Yes, sir.

Q. Do you say you were driving the car from which the shots were fired that killed Irving Penn? A. I drove the car after the shots were fired.

Q. You helped to kill a man named Whitey Friedman, did you not? A. I drove the car on that occasion as well.

Q. And you knew that Whitey Friedman was to be killed? A. Yes, sir.

Q. When you drove the car? A. Yes, sir.

Q. You knew what the job was that night, didn't you? A. Yes, sir.

Q. And you drove the men who did kill Whitey Friedman to where Whitey Friedman was? A. The man who killed him.

Q. The man who did it. And then you drove that man away, did you, after Whitey Friedman was killed? A. Yes, sir.

Q. How was he killed? Was he shot? A. Shot.

7426

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Q. These cars that you say you stole, some fifty or better, some of them were used in murders, were they not? A. Yes, sir.

Q. And some of them that were used in murders were driven by you? A. Will you kindly repeat that question?

Q. Some of these cars that were used in murders were driven by you?

7427

Mr. Turkus: I object to it. That is an ambiguous question. Does he mean were they driven on the murder? I object to the form of the question. It is very, very ambiguous and confusing.

The Court: He testified he had wheeled on at least two. I think Judge Talley wants to know whether they were stolen cars.

Mr. Turkus: I did not get that as the import of the question. I thought he was going into other—

7428

Mr. Talley: I will reframe the question, if the District Attorney cannot understand my language.

Q. You told the District Attorney that you stole some fifty cars or better; to use your language; didn't you? A. Yes, sir.

Q. And you have just told me that some of those cars were used in murders, didn't you? A. Yes, sir.

Q. Now my question is, when those cars were used for murders, did you on any of the occasions drive the cars either before the murder or after the murder?

Mr. Turkus: The words "before the murder" are confusing because to steal the car you have to do some driving. To affect his credibility, was he driving them on those murders; that is the question. In its form it is objectionable.

The Court: Overruled.

Mr. Turkus: And is confusing.

Q. Did you? A. I don't understand your question.

Q. I see. That is good enough. Some of the fifty cars that you stole were used in murders?

A. Yes, sir.

Q. What murders were they used in? A. On the Penn case.

Q. You told us about that. A. On the Friedman case.

Q. You told us about that. A. And on a couple of other cases that I have read in the papers the next morning. I recognized the car that I stole.

Q. What cases were they that you got your first notice about from the papers? A. Well, there was one on a couple of plasterers who was killed in Brooklyn.

Q. What were the names of those plasterers? A. I don't know.

Q. Didn't you read their names in the newspaper that you say you read? A. Yes, sir.

Q. And you don't remember their names? A. Yes, sir.

Q. You mean you do not remember their names? A. I do not remember their names.

Q. And who killed these two plasterers?

7430

7431

7432

Seymour Magoon—For People—Cross

Mr. Barshay: I object.

Mr. Turkus: Oh!

The Court: Sustained. That is fishing.

Q. Did you drive a car in any other murder than the murder of these Freedman, Penn, and the two plasterers? Did you steal the car that was used in any other murder? A. Yes, sir.

Q. What? A. Yes, sir.

7433

Q. Do you know how many? A. No. There was another one that I have in mind.

Q. You beat up a policeman in Coney Island, didn't you, on one occasion? A. No, sir.

Q. You did not? A. No, sir.

Q. Had no part in the beating up of a patrolman Murphy? A. I had a fight with him.

Q. Did you beat him up? A. I won the fight.

Q. What? A. I won the fight.

Q. You and who else? A. I fought with him alone but there was others standing around.

Q. Who helped you to beat Patrolman Murphy in Coney Island? A. Nobody.

7434

Q. Is that your answer, nobody? A. Yes, sir.

Q. At the time you beat up, had the fight as you say with this policeman, was Abie Reles with you?

Mr. Turkus: I object to the form of the question.

The Court: Sustained. It is too collateral.

Mr. Talley: I don't quite understand your Honor's ruling.

The Court: I am ruling according to the rules of evidence that on matters of

collateral impeachment, when you get through impeaching you stop. You do not try the case.

Mr. Talley: This is not a question of impeachment. This is a question of ascertaining who was with him when he beat a policeman.

The Court: We are not trying that issue.

Q. Isn't it a fact that you and Abie Reles and others ganged up on this patrolman in Coney Island? A. No, sir.

7436

Q. It is not? In the trial of Goldstein, you testified there, did you not? A. Yes, sir.

Q. And were you asked this question and did you make this reply (page 471): "Q. Reles was with you when you beat Murphy up, wasn't he? A. Yes, sir." Were you asked that question and did you make that reply?

Mr. Turkus: Object to it. That is not inconsistent.

The Court: Sustained.

7437

Mr. Talley: Exception.

Q. Did you ever shoot anybody? A. Yes, sir.

Q. Who? A. A couple of fellows.

Q. What were their names? A. Whitey Whalen.

Q. Where did you shoot Whitey Whalen? A. On Park Place off Buffalo Avenue.

Q. Brooklyn? A. Yes, sir.

Q. You never were convicted of that crime, were you?

7438

Seymour Magoon—For People—Cross

Mr. Turkus: I object unless he fixes the time when the shooting took place and what the crime was.

Mr. Talley: We will get to that.

Mr. Turkus: I object to it now unless the time be fixed.

The Court: Sustained.

Mr. Talley: Exception.

7439

Q. What did you say the name was, Whitey what? A. Whitey Whalen.

Q. When did you shoot Whitey Whalen? A. A few years ago.

Q. What year would that be? A. I would say about '32.

Q. About '32? A. 1932, around that time, '33.

Q. And were you arrested on the charge of shooting Whitey Whalen?

Mr. Turkus: I object to it. Arrests are not permissible.

The Court: Sustained.

7440

Q. Were you convicted of the charge of shooting Whitey Whalen?

Mr. Turkus: Objection. There is no such thing that there was a charge.

The Court: Overruled.

Q. Were you?

The Court: Yes or no.

The Witness: Can I hear that question again, please?

The Court: Were you convicted of that murder?

The Witness: That was no murder.

Mr. Turkus: Just a minute, Judge—

The Court: I beg your pardon, were you convicted of that shooting?

The Witness: I was not arrested for it.

The Court: Then the answer is "No"?

The Witness: No.

Q. What was the other case of shooting by you? When and where and whom did you shoot?

7442

A. A fellow Jerry.

Q. What was his other name? A. I don't recollect his other name.

Q. And when did you shoot him? A. About seven or eight years ago.

Q. That would be again about 1932 or '33?

A. Say about '33 or '34.

Q. About '34? A. Around that time.

Q. And where was Jerry when you shot him?
A. On Buffalo and St. Johns Place.

Q. In the day time or the night time? A. Night time.

7443

Q. What time at night? A. About eleven o'clock at night.

Q. Did he die as a result of the shooting? A. No, sir.

Q. Were you arrested for that charge? A. No, sir.

Q. So with your fifty or better automobiles, your several murders, and your at least two shootings by yourself, the only conviction that you have had was for vagrancy; is that right?

7444

Seymour Magoon—For People—Cross

Mr. Turkus: I object to the form of the question. "Several murders" is not in the testimony.

Mr. Talley: It is in the testimony out of the mouth of this witness.

Mr. Turkus: Judge, may I address the Court on a legal objection? I submit that that question is improper in form.

The Court: The objection is overruled

7445

Q. What is your answer? A. Will you repeat the question?

The Court: Your only conviction is vagrancy?

The Witness: Yes, sir.

Q. You are not living in any hotel now, are you? A. No, sir.

Q. You are confined in the Bronx County Jail, is that right? A. Yes, sir.

Q. And what is the charge against you there?
A. I don't think there is any charge against me there.

7446

Q. What do you expect for giving testimony in this case? A. (No answer).

Q. Do you expect leniency? A. I expect a little help.

Q. From whom? A. From those I am helping, in fact, I was told as much, providing I tell the truth about everything in the Bronx and in Brooklyn.

Q. Who told you that you would be helped if you told the truth in court, that apparently meant? A. District Attorney O'Dwyer and District Attorney Sam Foley.

Q. Have you testified before the Grand Jury in any of these cases? A. Yes, sir.

Q. Did you testify before the Grand Jury in the killing in the Bronx? A. Yes, sir.

Q. Did you sign a waiver of immunity before you testified? A. Yes, sir.

Q. And have you testified before any Grand Jury in Brooklyn? A. Yes, sir.

Q. In what case? A. In the Plug Shuman case.

Q. And did you sign a waiver of immunity in the Plug Shuman case before you testified before the Grand Jury? A. I don't recollect that.

7448

Q. Do you know what I am talking about when I say a waiver of immunity? A. I understand a little of what you are talking about.

Q. And you do not know whether you did or not in the Plug Shuman case? A. I don't know.

Q. Of course, you are charged with murder in the Bronx, aren't you? A. I suppose so.

Q. Do you know whether you were ever indicted in the Bronx for murder? A. I don't think I was.

7449

Q. You want to save yourself from going to the electric chair, if you can, do you not? A. Yes, sir.

Q. And in an effort to save yourself from going to the electric chair, you are testifying in this case, are you not? A. Yes, sir.

Mr. Talley: I have no further questions, sir.

Mr. Rosenthal: Judge, I have not made any applications throughout the trial, but in view of this testimony and the necessity

7450

Seymour Magoon—For People—Cross

of interviewing my client so as to intelligently cross-examine, I have no objection to your Honor sitting an extra half hour tomorrow, but I would like to get this testimony and not only digest it, but there are certain things which I don't want to divulge at this time, which I will have to get in the form of documentary things in addition to speaking to my client. So I earnestly request your Honor to give me this half hour or thirty-five minutes. I know this much, that if I am permitted this that I will save at least three hours tomorrow on cross-examination because I will have it in connected form and proper form.

7451

The Court: The trouble is that while the Court wishes to, in fairness, oblige counsel as much as possible, if a precedent is created now it will have to be followed and will actually prolong this long trial.

Mr. Rosenthal: I will then say to your Honor—

7452

The Court: Pardon me just a minute. Nothing here has been done hastily in all of the weeks that the trial has continued. Everything has been done methodically and, as I said before, largo, but I am sorry I cannot grant that request.

Mr. Rosenthal: I, of course, had no knowledge until this man took the stand—

The Court: You are up against that in the trial of any case.

Mr. Rosenthal: Usually the opening apprises you of just what to expect.

The Court: Oh, no, I never heard of such a thing as that.

Mr. Rosenthal: Then I will ask your Honor to give me ten or fifteen minutes without the jury, with my client, so I can intelligently cross-examine.

The Court: The trouble is the next time you want to cross-examine there will be another ten minutes.

Mr. Rosenthal: No, I have not asked for anything. I have been here at ten minutes to ten every morning and I have not desired to prolong this trial and I would not arbitrarily make a request of this character unless I was in absolute earnestness as to the necessity of it. This witness and his testimony is an absolute surprise to me and I must prepare in order to intelligently bring before the jury whatever defense there may be in the mind of this defendant.

7454

The Court: Here is your client. We will all wait here, and you consult him. That is the usual procedure in the trial of a case. Please don't discuss it any more.

7455

Mr. Rosenthal: I am not going to discuss it any further. Your Honor refuses the request. The most I can do is except to your Honor's ruling.

Mr. Talley: May I suggest counsel agree to sit an extra half hour tomorrow.

Mr. Rosenthal: Come here at half past nine tomorrow, as far as that is concerned.

The Court: The discussion is ended.

7456

Seymour Magoon—For People—Cross

By Mr. Rosenthal:

Q. Did you, Magoon, in the year 1928— Let me withdraw that.

Q. You say you have known the defendant Capone for how long? A. Eight or nine years.

Q. That would be that you know him since approximately the year 1933, is that right? A. Approximately, yes.

Q. How old did you say you were? A. Thirty-three.

7457

Q. In 1928, that is thirteen years ago, did you not, in company with a man by the name of Abraham Itzkowitz, on the 29th day of December, 1928, commit a robbery upon a man by the name of William J. Kennedy, a bricklayer, taking from him a Cole touring automobile, around 1:30 in the morning, on New Lots Avenue near Sackman Street, telling him at the time that if he tried anything funny, if he tried any funny stuff, that you would blow him apart, and at the same time beat him on the face and head when he resisted the taking of his car from him? Do you understand the question? A. Yes, sir.

7458

Q. Did you do that, you in company with one Abraham Itzkowitz? A. I think you are wrong on that, Counsellor. I can help you and give you the real story about that.

Q. Just a minute. Let me take it piece by piece then, sir. Didn't you at that time sign— Withdrawn.

Q. Didn't you go before the Grand Jury and testify against him— Let me withdraw that.

Q. First of all, do you know Abraham Itzkowitz? A. Yes, sir.

Q. Or did you know him in 1928? A. Yes, sir.

Q. Was he a friend of yours? A. An acquaintance.

Q. Did you go out with him prior to September of 1928? Did you and he go out together?

A. No, sir.

Q. Did you on the night or the early morning of September 9, 1928, in his company, accost— Let me put it so you can understand it—talk to a man by the name of William J. Kennedy who was the owner of a Code touring automobile? Did you talk to him, to Mr. Kennedy, the bricklayer?

7460

Mr. Turkus: ⁷ There are three questions there.

A. No, sir.

The Court: What is the answer?

Mr. Turkus: "No" was the answer.

Q. Did you, in company with Itzkowitz on that night hold up and take away from William J. Kennedy his automobile at 1:30 or thereabouts in the morning? Did you? Yes or no? A. No, sir.

7461

Q. Did you participate with Itzkowitz in the taking away of the automobile of Kennedy on that day and at that time? A. No, sir.

Q. You had nothing to do with the crime of taking from William J. Kennedy an automobile on that day, or on that morning? A. I had something to do with it.

Q. Now then, let me put it this way: Did you, in company with Itzkowitz, on or about that day, steal and take away from the possession of

7462

Seymour Magoon—For People—Cross

William J. Kennedy an automobile, a Cole automobile owned by Kennedy? Did you do that?
A. No, sir.

Q. You say you had something to do with the stealing of the automobile. Didn't you say that?
A. Yes, sir.

Q. What part did you play in the stealing of Kennedy's automobile? A. Stole it.

Q. You stole it? A. Yes, sir.

Q. Was he present at the time that you stole it—Kennedy? A. Yes, sir.

7463

Q. Was Itzkowitz present with you at the time that you stole it?

Mr. Turkus: That is objected to as incompetent, irrelevant, and immaterial.

The Court: Overruled.

Q. Do you understand the question? A. Yes, sir.

7464

Q. I assume that when you said you understand the question, the "Yes, sir" was to understanding the question. Will you answer the question? Was Itzkowitz with you at the time that you now say you stole that automobile?
A. No, sir.

Q. Did you steal it alone? A. No, sir.

Q. Was anybody else with you when you stole it? A. Yes, sir.

Q. Who was the second person or other person who was with you in 1928 when you stole the automobile? A. A fellow, Whitey.

Q. What is Whitey's last name? A. It ends with a "sky".

Q. Well, you mean his last name ends with a "sky"? A. Yes, sir.

Q. You are sure it is not with a "witz", Itzkowitz? A. Yes, sir.

Q. You are positive of that? A. Yes, sir.

Q. Now, then, the circumstances of your theft of this automobile, isn't it a fact that— Let me withdraw that.

You did not know Kennedy before the theft of this automobile, did you? A. No, sir.

Q. A total stranger? A. Yes, sir.

Q. Isn't it a fact that this man Kennedy, this bricklayer, parked his car on New Lots Avenue near Sackman Street at the hour of about 1:30 A. M., for about fifteen minutes, and entered his house, that is, Kennedy's house, and that when he came out he, Kennedy, entered his own car and he proceeded to start the car, when you approached him with the other man whom you say is Whitey with a ski on the end of his name, and struck him several blows upon the face and head, stating at the time—either you or your companion Whitey— "If you try any funny stuff, we will blow you apart," and then Kennedy was compelled to drive you and Whitey to Watkins Street and Lott Avenue?

7466

7467

Mr. Tarkus: I object to the form of the question, containing a wealth of material not testified to.

The Court: Overruled. Is that substantially true?

Q. Is that substantially the fact, yes or no?
A. A small part of it, your Honor, is true.

The Court: You stole the car?

The Witness: Yes, sir.

7468

Seymour Magoon—For People—Cross

The Court: And you beat up the man?

The Witness: We fought the man.

The Court: And you made him take you to another place?

The Witness: No, sir.

Q. That part is not correct, is it? All right, we will pass that. In any event, you fought off the legitimate owner of the car when he got in his car and tried to start it, is that right? A. I can explain that, counsellor.

7469

Mr. Rosenthal: Let us start off, Judge, if you will, please, with telling the witness we want no explanations. Where he can answer it yes or no, say yes or no. If he cannot, I will repeat the question to him so that he can fully and ably understand it.

Mr. Turkus: May we understand this, that Mr. Rosenthal is reading from a sheaf of prepared papers a question that it took at least a minute to read off.

7470

Mr. Rosenthal: Mark for identification, please, what he called prepared papers, a copy of a complaint in a Magistrate's Court.

Mr. Turkus: That is reprehensible. That is done solely to get something before the jury that an experienced trial lawyer like Mr. Rosenthal knew was reprehensible when he did it.

Mr. Rosenthal: I am not going to answer him, Judge.

The Court: The witness is instructed

just to answer the questions and not to volunteer any information.

Mr. Rosenthal: May I have this paper marked for identification?

Mr. Turkus: Yes, let us have it, and let us have all the other papers marked for identification.

Mr. Rosenthal: You will get them.

Mr. Turkus: On the theory that an adjournment was requested for lack of preparation. There are a sheaf of papers in his hand.

7472

Mr. Rosenthal: He is not going to make any statements about me. I am marking the three papers in my hand—I am not like him—for identification, consisting of complaints against this man. Will you please give ~~these~~ to the stenographer? I want ~~them~~ marked.

The Court: You mean Mr. Rosenthal did not mean he was taken by surprise?

Mr. Turkus: That is it.

Mr. Rosenthal: I am not surprised as to complaints that exist where there is public knowledge, but I am definitely surprised as to the testimony, and I reiterate what I said, so I will spend the rest of the afternoon in what are public records as to this man.

7473

Mr. Turkus: There is some surprise here, Judge.

The Court: We will spend it to more advantage if there is less argument between counsel. Proceed, Mr. Rosenthal.

Mr. Rosenthal: I offer those three

7474

Seymour Magoon—For People—Cross

papers that Mr. Turkus offered. First, I want them marked for identification, then I will offer them in evidence after they are marked—what he calls a sheaf of papers.

The Court: He cannot say anything until the offer in evidence is made.

(Papers marked Defendants' Exhibits W, X and Y, for identification.)

7475

Mr. Rosenthal: Now I offer the three papers in evidence.

Mr. Turkus: Let me see them. With respect to People's Exhibit W, for identification, consisting of seven pages, it is incompetent.

The Court: I don't even have to read it. Sustained.

Mr. Rosenthal: Exception.

Mr. Turkus: With respect to People's Exhibit X, consisting of one page, that is incompetent.

7476

The Court: Sustained.

Mr. Turkus: As to People's Exhibit Y, consisting of two pages, even though it is incompetent, I have no objection.

Mr. Rosenthal: Just a minute. I am going to show the inconsistency of the proposition.

The Court: No.

Mr. Rosenthal: I have offered these three papers together.

The Court: I won't hear of any inconsistency. That is for the jury. The

Judge was initiated forty years ago into this practice.

Mr. Rosenthal: I except to the Court's ruling. I have offered these three papers.

The Court: There is not one that is competent. Now you are objecting because counsel consents that one of them go in evidence. All right, he consents. You offer to put it in evidence.

Mr. Rosenthal: I consent to it. I am not objecting to it at all.

The Court: No speeches.

7478

Mr. Rosenthal: Now I reoffer the other two.

The Court: The Court refuses to even pass on it.

Mr. Rosenthal: I respectfully except.

The Court: Just by-play to the jury.

Mr. Rosenthal: I except to that remark.

The Court: You ought to know better.

Mr. Rosenthal: And I again except.

The Court: In fact I say you do know better. Now take that for what it is worth. Take your exception and make a motion for a mistrial; the Court overrules it and you have an exception. Proceed with the examination.

7479

(Defendants' Exhibit Y for identification received and marked Defendants' Exhibit 3 in evidence.)

Mr. Rosenthal: Now then I ask the privilege of reading it.

The Court: You do not have to ask it.

7480

Seymour Magoon—For People—Cross

You know you have a right. Go ahead and read it to the jury.

Mr. Rosenthal: Thank you.

7481

(Reading) "Affidavit—Robbery. City Magistrates' Court, Tenth District, City of New York, Borough of Brooklyn, County of Kings. William J. Kennedy of 61 New Lots Avenue, aged 21 years, occupation bricklayer, being duly sworn, deposes and says that on the 9th day of September, 1928, in the Borough of Brooklyn, in the City of New York and County of Kings, was feloniously taken, stolen and carried away from the person of deponent by force and violence, without his consent and against his will, the following property, viz:

7482

"A Cole touring automobile of the value of five hundred (\$500) dollars, the property of deponent, and that this deponent has a probable cause to suspect and does suspect that the said property was feloniously taken, stolen and carried away by force and violence by Seymour Magoon and Abraham Itzkowitz. Deponent further says that he parked said car on New Lots Avenue near Sackman Street at the hour of about 1:30 a. m., for about 15 minutes, while he went into his house for that period and that when he came out he entered his car and proceeded to start same when these two defendants approached, one on each side of same, and struck him several blows upon the face and head with their fists saying, 'If you

try any funny stuff we will blow you apart' and compelled deponent to drive them to Watkins Street and Lott Avenue and told him 'to get the hell over, we are going to drive this car.' Deponent got out and then sent an alarm to Police Headquarters and they were found by two motorcycle patrolmen at Kings Highway and Ocean Parkway, Brooklyn, in the possession of said car.

"Corroborative affidavits of said officers hereto annexed. William J. Kennedy. Sworn to before me this 9th day of September, 1928, Charles Haubert, City Magistrate. Bailed on September 10, 1928, by Annie Magoon, one thousand dollars for examination.

7484

"Bailed on October 5, 1928, by Lena Froesch, twenty-five hundred dollars to answer when held for Grand Jury.

"Letter on file.

"To whom it may concern, I, Seymour Magoon, am willing to appear before the Grand Jury and testify to the truth of the case Monday at ten a. m. Seymour Magoon.

7485

"Signed waiver of immunity 10/29/28.

"Letter 10/2/28 from Harold Reitman, Attorney for Magoon, requesting permission to testify before Grand Jury under waiver of immunity. Corroborating affidavits of Officers Fitzgerald and Meeks 9/9/28. Dismissal by Grand Jury."

Q. Did you testify before the Grand Jury in that case? A. I think so.

7486

Seymour Magoon—For People—Cross

Q. What is your recollection? Did you? A. I say I think so.

Q. Now you admit today, do you not, that you actually did steal that automobile? A. Yes, sir.

Q. Didn't you tell an untruth before the Grand Jury in respect to whether or not you stole that automobile when you testified under oath before them in 1928? A. I don't understand the question.

7487

Q. Let me put it very plainly to you. You signed a waiver to appear before the Grand Jury in respect to this charge made by William J. Kennedy against you. Do you recall that now? You said you think so? A. Yes, sir.

Q. Is it clear in your mind? Do you recall now that you actually did testify before the Grand Jury? A. If that is there, I must have done that.

Mr. Rosenthal: I ask that the answer be stricken, not responsive.

The Court: Let it stand.

7488

Mr. Rosenthal: Exception.

Q. I am asking you for your recollection at the present time. Did you or did you not in respect to that particular charge testify before the Grand Jury? A. I answered that question, counsel.

Q. Can you recall better than your answer whether or not— Let me withdraw that.

Q. Have you any recollection whatsoever as to whether or not you in 1928 appeared before a Grand Jury in Brooklyn and testified in your own behalf in respect to that particular charge?

Have you any independent recollection at this time? Do you know what the word "independent" means? A. No, sir.

Q. Let me explain it in a way that you do understand.

The Court: Do you know whether you did or not?

Q. Do you have any recollection? A. I think so, your Honor.

7490

The Court: Is that as far as you can go?

The Witness: That is about as far as I can go.

The Court: You don't actually remember?

The Witness: No, I don't fully remember the thing.

Q. Isn't it a fact that in so far as that charge was concerned that you testified falsely before the Grand Jury in respect to yourself and your connection with that particular charge?

7491

Mr. Turkus: I object to it, if he cannot even remember whether he testified or not—

Mr. Rosenthal: I object to any argument by the District Attorney that will put words into the witness's mouth.

Mr. Turkus: That might be expected.

Mr. Rosenthal: Whether that is the intention or not.

The Court: Objection sustained.

7492

Seymour Magoon—For People—Cross

Mr. Rosenthal: Exception.

Q. Have you any recollection?

The Court: Just a minute. I sustained your objection to what Mr. Turkus said.

Mr. Rosenthal: Thank you, sir.

The Court: In connection with his objection. Mr. Turkus's objection is overruled.

7493

Q. Do you recall the question or do you want me to repeat it?

The Court: Do you remember testifying falsely before the Grand Jury?

The Witness: No, sir.

The Court: In that case?

The Witness: No, sir.

The Court: There is your answer.

Q. You said you are how old now? A. Thirty-three.

7494

Q. When were you born? A. April 21, 1908.

Q. In 1930, in the Borough of Manhattan, on October the 29th— Let me withdraw that.

Q. Did you know a firm Max Udell & Sons Company in Manhattan in the year 1930? A. I have heard of the firm.

Q. Did you know one Theodore Lentz in October of 1930? A. Yes, sir.

Q. Did you know one William Adams in October of 1930? A. No, sir.

Q. Did you know a Philip Lentz in October of 1930? A. Yes, sir.

Q. Did you, in company with others whose names I have just mentioned, on or about the 29th of October, 1930, steal from Max Udell merchandise and evening apparel of the value of over two hundred thirty-odd dollars? Did you, in company with them or any one of them?

A. No, sir.

Q. Were you at the premises of Max Udell & Sons on the 29th of October, 1930?

Mr. Turkus: It is objected to. It is incompetent, irrelevant, immaterial.

7496

Mr. Rosenthal: I will lay the proper foundation. There is a twofold purpose, if you wish me to explain it to your Honor.

The Court: You cannot try the issue. You can ask him if he committed these other crimes.

Mr. Rosenthal: The purpose is not to try the issue, your Honor; the purpose is to see whether or not, if he now denies, he did not testify under oath contrary to his denial, which would be an entirely different crime. That is the purpose.

7497

The Court: You can ask him that.

Mr. Rosenthal: That is what my purpose is.

The Court: That is not what the question appeared to be.

Mr. Rosenthal: This is preliminary. I am first laying the foundation as to whether he knew these people and knew they were employees of this concern, and

7498

Seymour Magoon—For People—Cross

then as to whether he was at that concern on that day.

7499

The Court: That may lead you to speculate to the jury as to whether or not he was telling the truth when he said he did not commit the crime. That is not permissible under collateral impeachment because it causes the jury to be lost in a maze of issues which are not on trial. The witness on the stand either admits or denies the commission of the other crimes or the doing of the alleged acts which tend to show dishonesty on his part. Of course, the record is quite replete on that point.

Mr. Rosenthal: This, of course, goes back, your Honor—

The Court: This is quite cumulative.

Mr. Rosenthal: No, this goes back to 1930, your Honor, whereas this witness claims that he became acquainted with this defendant at a subsequent time. The purpose of my inquiry—

7500

The Court: Which defendant?

Mr. Rosenthal: With the defendant represented by me, sir.

The Court: I thought he said about 1935 or 1936.

Mr. Turkus: I believe it was 1934.

The Court: If this is to show association with Capone before that date, you may do it.

Mr. Rosenthal: No, this is to show the criminal propensities prior to the date of his ever meeting Capone, according to his own testimony.

The Court: I do not understand he hangs his hat on Capone for deviation from the straight and narrow path. You cannot try the issue. Sustained.

Mr. Rosenthal: I respectfully except.

Q. Let me ask you this question in respect to this particular thing—

Mr. Rosenthal: Your Honor will have to indulge me a second so that I can read it so that I can properly ask the question—

7502

The Court: May I suggest this, because four o'clock is about at hand. I think that it would be well if the prosecution would, whenever it sees it is approaching the close of its case, so advise the defense so that they may be ready to proceed with the trial.

Mr. Turkus: I believe I will be able to rest tomorrow.

The Court: If we rest tomorrow, then I won't have to compel the defense to go ahead tomorrow, if you rest tomorrow.

7503

Mr. Turkus: Yes, if we work tomorrow, I believe I will be in a position to rest the People's case.

The Court: Then it is all right of the Court to ask the defense to be ready to proceed with the defense on Monday upon the prosecution resting. It is six minutes of four, and I will indulge you now, Mr. Rosenthal.

Mr. Rosenthal: I will continue now until four o'clock, your Honor.

7504

Seymour Magoon—For People—Cross

The Court: All right, use up the six minutes.

Mr. Rosenthal: I will use the six minutes up. The purpose I had before was to save time.

By Mr. Rosenthal:

7505

Q. Now, I will ask you this question: Did you on October 29, 1930, and Philip Lentz receive from two employes of Udell Sons and Company, to wit, Theodore Lentz, and William Adams, property or goods which were owned by Udell and Company and stolen by those two employes and delivered to you and Philip Lentz? Did you commit that act in October of 1930?

Mr. Turkus: That is objectionable.

The Court: Overruled.

Mr. Turkus: Your Honor, there is no scienter in that question.

Mr. Rosenthal: Certainly.

7506

Mr. Turkus: No, not the way it has been read.

Mr. Rosenthal: It is overruled. Let us get along with the six minutes.

Mr. Turkus: Let me discuss something, Judge. I have a lot of judges at my back. Let me talk to the one in the front. If your Honor will read that question you will see that the essential element to affect his credibility, namely, scienter, is absent, and thus the question is confusing and improper.

The Court: I felt justified in presuming it.

Mr. Turkus: You felt justified in presuming, but it is not there.

Mr. Rosenthal: I thought, Judge, that counsel was not to argue with the Court when the ruling was made. I think that should apply to the District Attorney.

Mr. Turkus: The District Attorney has no exception, you know. We cannot say "exception" and make a record, so the Court should indulge the District Attorney.

7508

The Court: That applies to both sides.

Mr. Rosenthal: The six minutes are gone.

Mr. Turkus: So you are very lucky.

The Court: Now you are willing to give up.

Mr. Rosenthal: No, I am not. The Court has ruled in my favor.

The Court: I have ruled in your favor. Now let the witness answer.

Q. Now, answer the question, will you?

7509

The Court: Did you receive the goods?

The Witness: Yes, sir.

Q. And you knew that they were stealing them from Udell when you got them, didn't you? A. Yes, sir.

Q. And you had a brother of one of the employees of Udell with you when they stole the goods and when they were delivered to you; isn't that true? A. Yes, sir.

Q. Now, then, at the time that he got the goods, isn't it a fact in addition thereto that you

7510

Seymour Magoon—For People—Cross

threatened somebody at the time that you got these goods?

Mr. Turkus: Object to the form of the question.

The Court: Overruled.

Q. Isn't that the fact? A. If you say so, counsellor, it must be so.

Q. Oh, no.

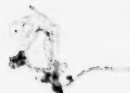
7511

Mr. Rosenthal: I think we will take a recess. The witness is getting too agreeable, Judge.

The Court: Everybody kindly remain in order. Members of the jury, please do not discuss the case, let nobody talk to you about it, keep your minds open, follow all the other admonitions heretofore given. We will resume tomorrow morning at ten o'clock. First, the witness may go, then the jury out by the other door.
Defendant remanded.

7512

(Adjournment taken to November 15, 1941, at 10:00 A. M.)

*Seymour Magoon—For People—Cross*

7513

Brooklyn, N. Y., November 15, 1941.

TRIAL RESUMED.

SEYMOUR MAGOON, a witness for the People, resumed the stand and testified further, as follows:

Cross examination by Mr. Rosenthal (continued):

Q. Now, Mr. Magoon, yesterday I was questioning you, and just as you made the effort to recall, I was asking you about stolen merchandise from Udell and Company, do you recall?
A. Yes, sir.

7514

Q. Now, did you know a man named Joseph Cooperman? A. I did not hear that.

Q. Did you know a man named Joseph Cooperman? A. Yes, sir.

Q. Did you know that man in the year 1934?
A. I have known him for a number of years.

Q. Was he a friend of yours? A. I could not very well say that.

7515

Q. Was he an acquaintance of yours? A. Yes, sir.

Q. Did you on the 23rd of October, 1934, in front of premises or at premises number 5815 Snyder Avenue, shoot and kill Joseph Cooperman? A. No, sir.

Q. Were you at or near those premises on that night? A. No, sir.

Q. Do you know a man named Bobby Burns?
A. Yes, sir.

Q. Were you in business with him? A. Yes, sir.

7516

Seymour Magoon—For People—Cross

Q. You were in the shylock business with him, weren't you? A. Yes, sir.

Q. How long a period of time had you been in the shylock business with Bobby Burns, approximately? A. I would say roughly about two years.

Q. Commencing from when, approximately? A. I could not very well say that.

7517

Q. Well, were you in business with him in the year 1936 and the end of 1935? A. I would say it was about that time.

Q. Did you know a man named Leo Shayer, of number 405 Lexington Avenue, Manhattan, a merchant? A. Yes, sir.

Q. Did you and Bobby Burns extort money from Leo Shayer in front of the premises 1101 Kutland Road, in Brooklyn? A. No, sir.

Q. Did you and Bobby Burns extort money from in front of any premises? A. I did not extort any money from him.

7518

Q. Let me put it this way: Were you in the company of Bobby Burns when he extorted money from Shayer, you know, prior to the time he was extorting the money, that he was going to extort it? A. No, sir.

Q. Did you threaten this man Shayer at any time? A. No, sir.

Q. Were you present with Bobby Burns at the time he took a pistol from his pocket and struck Shayer over the temple with the butt of the gun, were you present with him?

Mr. Turkus: I object. That does not affect his credibility.

The Court: Overruled.

A. No, sir.

Q. How long had you known Shayer? A. A number of years.

Q. Did you and Bobby Burns loan Shayer any money in your shylock business? A. I loaned Shayer money in my shylock business.

Q. That is, you loaned him the sum of \$50. for which you demanded \$60.? A. No, sir.

Q. How much did you loan him? A. \$25.

Q. How much did you ask for? A. \$30.

Q. For a week, that was? A. Yes, sir.

Q. Did you know a woman named Anna Stein? A. Yes, sir.

7520

Q. When you loaned this money to Shayer, did you procure from him notes which were payable to the name of Anna Stein? A. No, sir.

Q. Was Anna Stein a friend or a relative of yours? A. No, sir.

Q. Where did she come from? A. I do not know.

Q. Did she sign any of the notes? A. Not that I know of.

Q. Did there come a time when Shayer did not pay you the amount of money which you demanded for the loan? A. Will you please repeat that?

7521

Q. Did there come a time when Shayer did not pay you the money which you demanded for the loan which you had made? A. No, sir.

Q. He paid it voluntarily? A. Yes, sir.

Q. Were you with Bobby Burns on the 9th day of January, 1936, at 11:40 P. M. in the premises or in front of the premises 1101 Rutland Road? A. Yes, sir.

Q. At that time, while you were with him, did you see Leo Shayer? A. Yes, sir.

7522

Seymour Magoon—For People—Cross

Q. Prior to the time that Leo Shayer arrived, had you had a conversation with Bobby Burns as to the purpose for which Shayer was coming to 1101 Rutland Road? A. No, sir.

Q. Did you, when you went to 1101 Rutland Road with Bobby Burns, know that Shayer was coming there? A. Yes, sir.

Q. At any time did Shayer owe you any money? A. Yes, sir.

7523

Q. Now, then, is it a fact that on that day you demanded the money from Shayer that he owed you? A. No, sir.

Q. Did Burns in your presence demand the money? A. It was money that he owed Burns, no shylock money.

Q. So that in your presence Burns demanded other money that had been owed to Burns, is that right? A. Right.

Q. At that time did the man ask for a week's time in which to get it?

7524

Mr. Turkus: I object. That does not affect the witness' credibility.

Mr. Rosenthal: I am coming to the issue. There are several issues here.

Mr. Turkus: It looks like the trial of an issue far afield from the credibility of the witness or the indictment that we are here trying.

The Court: If there was an assault committed, why not come right down to it.

Mr. Rosenthal: I will accept your Honor's suggestion.

Q. Did you on the 2nd day of January, 1936, go to Shayer's office at number 45 Lexington Avenue? A. No, sir.

Q. Did you on that day or about that day, at those premises, accompany Burns when Shayer was struck with a gun and told that if he did not get the money that he would be killed; were you with Burns when that happened?

Mr. Turkus: I object. That does not affect the credibility of the witness.

7526

Mr. Rosenthal: He was asked whether he had knowledge of what was to take place.

The Court: Objection overruled.

A. I have already answered that question, counsellor.

Q. Well, what is your answer, if you answered it, do you recall it?

Q. (The Court) Were you there? A. No, sir.

Q. Now, the shylock business that you conducted—withdrawn.

Q. How long had you been conducting the shylock business, how many years? A. On and off for about ten years.

7527

Q. And, by the shylocking business, do you mean that you would loan sums like five dollars for one dollar additional every week? A. Yes, sir.

Q. Were you familiar with the methods used by most shylocks in and about the vicinity where you hung out?

Mr. Turkus: I object to that. That

7528

Seymour Magoon—For People—Cross

does not affect his credibility—that is his method.

Mr. Rosenthal: That is preliminary.

The Court: If he did not know the method, he should not have been in business.

Q. (The Court) Was the method to beat up for the money? A. No, sir.

Q. (The Court) What? A. No, sir.

7529

Mr. Turkus: He may be talking about his method or somebody else's method.

The Court: It is a matter of common knowledge how shylocks work.

Q. When did the ten years commence when you were in the shylock business, approximately? A. Approximately, in '31, '32.

Q. Now, you testified here that you left school when you were about sixteen years old? A. Right.

7530

Q. Is it not a fact you left school when you were fourteen years old? A. I said about sixteen; I did not exactly say sixteen, counsellor.

Q. Well, were you asked— Question withdrawn.

Q. You testified in the trial of the People against Nitzberg, in the County Court here in May of 1941, did you, as a witness? A. Yes, sir.

Q. That is about five or six months ago, isn't it, that you were a witness? A. Yes, sir.

Q. Were you asked this question regarding your schooling and did you give this answer, page 220 of the printed record on appeal:

“Q. How old were you when you graduated,

or when you left 7-B or 7-A? A. About fourteen years old."

Did you say that? A. If it is there, I said it.

Q. Have you any independent recollection as to whether or not when you testified in that trial you did not say you were fourteen years old when you left school? A. I say, counsellor, if it is there, I said it.

Q. Well, now, it is here. Do you say that if it is here you said it? A. Yes, sir.

Q. Was it correct that you were only fourteen years old when you left school? A. About that; I would not remember eighteen years ago exactly, counsellor; I was never interested in school very much.

7532

Q. Well, before, in this trial, you said that you were in the eighth grade when you left; didn't you say that in this trial? A. Yes, sir.

Q. And in the Nitzberg trial you said you were in the seventh grade when you left, did you not? A. 7-B is called the eighth grade, one and the same thing, in my estimation.

Q. What would the 8-A be called? A. The eighth grade.

7533

Q. 7-B and 7-A would be called the eighth grade? A. 7-B I would call the eighth grade.

Q. Now, whatever your age was when you left school, did you go to work? A. Yes, sir.

Q. Before going into that, Magoon, let me ask you this question: At the time you had this so-called fight with Patrolman Murphy, you told Judge Talley you knocked him to the ground—was he unconscious? A. Yes, sir.

Q. When you left school did you go to work? A. Yes, sir.

7534

Seymour Magoon—For People—Cross

Q. Where did you go to work? A. In a millinery supply house.

Q. What was the name of it? A. I don't remember.

Q. Where was it located? A. On 38th Street.

Q. In Manhattan? A. Yes, sir.

Q. How long did you work there? A. I would say approximately over a year.

Q. You don't know the name of your boss?
A. I do not recollect it off-hand, but I will eventually.

7535

By the Court:

Q. How long ago was that fight, sixteen or seventeen years ago? A. Yes.

Q. Where was it? A. On 38th Street, Manhattan.

By Mr. Rosenthal:

Q. Did you work there steadily for this year?
A. Yes, sir.

7536

Q. Did you have any other employment at any time? A. No, sir.

Q. Was that the only legitimate employment you ever had in your life? A. No, sir.

Q. Well, did you work for somebody else at some other time? A. Yes, sir.

Q. Then I suppose you did not understand my question when I said was that the only employment you ever had, legitimate employment. Where else did you work, if you worked for somebody else, and when, if you can recall? A. I worked in a liquor supply house on Fifth Avenue.

Q. How long did you work there? A. I don't remember how long, because I will be truthful with you, I was never interested in work or in school.

Q. All right, but can you remember whether or not, even while you were working in the millinery house, you did not steal automobiles, even while you were working in this first legitimate place of employment you had, didn't you steal automobiles? A. I may have.

Q. Well, cannot you answer any more definitely than that, that in your first place of employment—I will withdraw that.

7538

Q. How long after you left school was it that you went to work in this millinery supply house in 38th Street, how long after you left school did you get that job, approximately? A. I cannot answer that question to be correct about it.

Q. When I say approximately, was it within six months after you left school that you got that job? A. I cannot very well answer that question.

Q. Can you approximate in time whether it was a year after you left school—let me withdraw that and put it this way: Did you immediately upon leaving school start to steal automobiles, before you got any legitimate jobs? A. I stole cars when I was going to public school.

7539

Q. You stole them even while you were in public school? A. Yes, sir.

Q. Then, after you got out of public school, you continued to steal cars? A. For joy rides, and such, yes, sir.

Q. You mean that the first cars you stole when

7540

Seymour Magoon—For People—Cross

you were in public school were for joy rides, is that what you mean? A. Yes, sir.

Q. Then later did it become a business, your stealing of automobiles, and selling them, when you were working in this millinery house? A. No, sir.

Q. Then, is it your idea, that you first became a thief while you were attending public school, is that right? A. Yes, sir.

7541

Q. Now, you do not expect to be electrocuted for any of the murders you have committed, do you? A. I hope not.

Q. You don't expect to be? A. I hope not.

Mr. Turkus: I object.

Q. Weren't you asked in the Strauss trial this question and didn't you give this answer— I will withdraw that for the moment.

Q. Would you lie to save your own life?

Mr. Turkus: I object to the form of the question.

7542

The Court: Objection overruled.

A. No, sir.

Q. Your answer is you would not lie to save your own life, is that right? A. Yes, sir.

Q. Did you ever lie in your life? A. Little white lies.

Q. White lies? A. Little white lies.

Q. You have been telling little white lies pretty nearly all your life, haven't you? A. No, sir.

Q. Well, from the time you went to public

school and started to steal, you told little white lies, didn't you? A. Yes, sir.

Q. And you continued on telling little white lies all the way through? A. Just at intervals, counzellar.

Q. But you never told anything but little white lies, is that right? A. Yes.

Mr. Turkus: I object.

Mr. Rosenthal: All right, he has answered. Do you want to strike out the answer?

7544

Mr. Turkus: No, let it stand in the record.

Q. Now, you have been in the neighborhood of Brownsville for how long a period of time, approximately? Let me put it this way, so you can get it clear: Were you born in Brownsville? A. No, sir.

Q. Where were you born? A. Manhattan.

Q. When did you move to Brooklyn? A. I was about one year old when my people moved to Brooklyn.

7545

Q. You were practically born in Brooklyn, you went to school in Brooklyn, didn't you? A. Yes, sir.

Q. When you say "in Brooklyn", you mean the Brownsville area or the East New York area? A. That is right.

Q. So that from the time you were one year of age you have lived in the Brownsville or East New York area of Brooklyn, is that right? A. Yes, sir.

Q. Now, you say you knew Abe Reles, you said that to Mr. Turkus, didn't you? A. Yes, sir.

7546

Seymour Magoon—For People—Cross

Q. How long did you know him? A. About fifteen years.

Q. Is it not a fact you knew Reles from the time you were a kid? A. No, sir.

Q. You used to visit Reles almost every day in the week at his home, didn't you?

Mr. Turkus: I object unless the time is fixed.

7547

Q. Over a period of time, of years? A. In the late years, yes, sir.

Q. Commencing when did you start to visit Reles' house— Let me withdraw it and put it this way: You visited Reles' house mornings, afternoons and nights pretty nearly every day, didn't you, for a period of time? A. Yes, sir.

Q. Commencing when was it that you first started visiting Reles' home on mornings, afternoons and nights, almost daily—commencing when—how many years ago? A. For the last four years or so.

7548

Q. When you say, "the last four years or so", do you mean commencing about 1935 or 1936? A. No.

Q. Do you remember when Reles came out of jail? A. Yes, sir.

Q. When did he come out of jail? A. On what charge are you referring to, counsellor?

Q. I don't know what the charge was, but in or around 1934, 1935 or 1936— I will withdraw that.

Q. When did he come out of jail the last time, I will point it out that way, that you know of?

Mr. Turkus: I object. That does not go to his credibility.

Mr. Rosenthal: It is for the purpose of fixing the time, that is all.

Mr. Turkus: I will tell you it was October, 1936. See if that refreshes him.

Q. Mr. Turkus says approximately, so we do not get the exact date, in October of 1936 was the last time Reles came out of jail. Now, does that refresh your memory—the last time before 1940, on the sentence that he served, does that refresh your memory? A. Please repeat.

7550

Q. Mr. Turkus has informed me that in the month of October, 1936, approximately, was the last time that Reles came out of jail after receiving a sentence: does that refresh your memory? A. Yes, sir. I was in jail at that time.

Q. Before he came out of jail you had known him? A. Yes, sir.

Q. Now, then, I understand he was in jail from 1934, does that refresh your memory, to 1936— Reles? A. Yes, if I recollect right.

Q. Well, approximately, I am not trying to catch you on any date? A. Yes, sir.

7551

Q. Didn't you and Reles hang out together before he went to this jail in 1934, and go out socially together? A. We were friends.

Q. And you went out to visit one another, and went out socially, isn't that true? A. Far and few times in between.

Q. But in 1936, after you came back from jail, you visited him mornings, noons and nights, didn't you, practically every day in the week? A. Well, I was at his home quite often.

Q. In fact, do you recall whether or not you

7552

Seymour Magoon—For People—Cross

were not even at his home on Labor Day when Feinstein was killed in his home? Do you recall whether you were not there on that day? A. Will you repeat that question, please?

Q. Do you recall whether or not you had not been to Reles' home on the day that Feinstein was killed in his home—Labor Day? A. No, sir.

7553

Q. Well, you say, "No, sir," you were not there, or, "No, sir," you do not recollect? A. No, sir, I was not there.

Q. Were you there the day before at Reles' home? A. I cannot very well answer that and be honest in answering it.

Q. You cannot remember, is that your answer, is that your answer, that you cannot remember whether you were or not? A. I was at his home, as you say, mornings, noons and nights, at all hours of the night.

Q. That is as you say, not as I say.

7554

Mr. Turkus: What is the difference who says it, if that is his testimony?

The Witness: Well, it is correct.

Q. All right, it is answered— Did you know Reles' brother, Sandy Reles? A. Yes, sir.

Q. How long had you known him? A. Quite a number of years.

Q. Was he in the shylock business also? A. Yes, sir.

Q. Did he conduct a shylock business right across the street from 725 Sutter Avenue, on the corner of Sutter and Bradford Street; is that where he conducted his business? A. I don't know.

Q. Are you acquainted with the corner of Bradford Street and Sutter Avenue; or, were you acquainted— I will put it in that way—in 1936 and prior thereto with the surrounding vicinity, including the corner of Bradford Street and Sutter Avenue? A. How do you mean by acquainted?

Q. I mean, did you have knowledge of that neighborhood, that is, if you passed by there on occasions? A. Yes, sir, I have passed by on occasions.

7556

Q. Were you acquainted with the luncheonette that was on the corner there of Bradford Street and Sutter Avenue, Ardie's—Ardie's Luncheonette—were you acquainted with that place? A. No, sir.

Q. Had you ever been in there? A. I don't think so.

Q. Well, now, to your knowledge, did Sandy Reles shylock—or, we will put it this way—Did you ever see Sandy Reles hanging out on the corner of Sutter Avenue and Bradford Street during the year 1936, and prior, or before 1936, did you ever see Sandy Reles hanging out there?

7557

A. I have met him in East New York on a few occasions, but on what streets they were, I do not recall.

Q. In other words, so I can get your answer, is your answer that the street or location where you met Sandy Reles you cannot recall at this time? A. It was in East New York, but where, I cannot.

Q. Is Bradford and Sutter Avenue in East New York? A. Yes, sir.

Q. Is your answer that you cannot recall

7558

Seymour Magoon—For People—Cross

whether it was at Bradford and Sutter you met him, or that you cannot recall what streets you met him; is that your answer?

Mr. Turkus: He met him somewhere in East New York. It is far afield on the question of credibility. It has nothing to do with the issue here.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

7559

The Court: You can ask him about the act, but avoid details.

Q. Did you know Harry Strauss for any length of time? A. Yes, sir.

Q. How long had you known Harry Strauss?

A. Fifteen years or so.

Q. And where did you meet Harry Strauss, do you recall? A. In East New York.

Q. Where, in East New York? A. On Livonia Avenue.

Q. Livonia and what other avenue? A. Well, it was in a pool room.

7560

Q. (The Court) Saratoga and Livonia? A. No, sir, it was in a pool room in East New York.

Q. After becoming acquainted with him, did you go out socially and continuously with Harry Strauss for a number of years? A. In later years, yes.

Q. By later years, how many years do you mean that he and you went out socially together, practically daily— I will withdraw that.

The Court: He testified that he was a member of the combination that Strauss was in.

Q. (The Court) Was Strauss the treasurer?
A. He was one of the bosses.

Q. (The Court) Did he carry the bag and make the split? A. No, sir.

Q. You and Strauss visited one another's homes, didn't you? A. Yes, sir.

Q. You went out socially, didn't you? A. Yes, sir.

Q. Practically daily, is that right? A. Yes, sir.

Q. Regarding Goldstein, how long did you know him? A. The same number of years.

7562

Q. And the same situation as in respect to Reles and Strauss—going out daily and socially?
A. Was that Goldstein also?

Q. Wasn't it? A. How could that be, counsellor?

Q. Let me put it this way: Did you go out socially with Goldstein? A. Yes, sir.

Q. Practically daily? A. Well, if I was with him daily, and Strauss daily, and Reles daily, there's something funny some place.

Q. I will ask you, Magoon, and I just want your answer— Did you go out socially with Goldstein? A. Yes, sir.

7563

Q. Did you visit one another at each other's home? A. Yes, sir.

Q. Very frequently, would you put it that way? A. Yes, sir.

Q. And over a period of years, is that correct? A. Yes, sir.

By the Court:

Q. Did you go to Florida, too? A. Yes.

7564

Seymour Magoon—For People—Cross

Q. What hotel did you stop at? A. The Everglades.

Q. That is in Miami City? A. Yes, sir.

Q. The biggest hotel there? A. Yes, sir.

Q. A high-class hotel? A. Yes, sir.

By Mr. Rosenthal:

Q. You went to Florida with Harry Strauss?
A. Yes.

7565

The Court: He stopped at the Nassau, Miami Beach.

The Witness: Yes.

Q. How often did you go to Florida, as long as the Judge has asked these questions I will ask you a few questions on it. How often did you sojourn in Florida? A. That was the only time I ever was.

Q. (The Court) What year was that? A. That was in the summer of 1939.

Q. The summer of 1939? A. Yes, sir.

7566

Q. (The Court) The Everglades was open in the summer? A. Yes, sir, of 1939.

Q. (The Court) There was no racing season on? A. No, sir.

Q. (The Court) No dog races either? A. No, sir.

Q. (The Court) Sure of that? A. Positively.

Q. What part of the summer were you stopping at the Everglades, July? A. June.

Q. With Harry Strauss? A. Yes, sir, and others.

Q. Now, the defendant Capone was not in Florida with you, was he? A. No, sir.

Q. Now, you had a garage on Sackman Street near New Lots Avenue which had been rented by Joe Pilch, didn't you? A. Yes, sir.

Q. Do you recall when that garage was rented by Joe Pilch, approximately? A. I do not know the exact date. I think it was about the early part of 1938.

Q. Well, now, is it not a fact that it was around about four or five months before January of 1939, isn't that the fact? A. No, I think it was about 1938.

7568

Q. Well, now, were you asked in the Nitzberg trial, at page 220, folio 660:

"Q. Do you know a garage, a private garage, out on Sackman Street, in Brooklyn? A. Yes, sir.

"Q. Near what other street was that? A. Lott and New Lots.

"Q. And how many cars did that garage hold? A. One car.

"Q. Who rented the garage? A. Pilch.

"Q. A man by the name of Pilch? A. Yes, sir.

7569

"Q. When prior to the 9th of January, 1939, was that garage rented, if you know? A. To the best of my knowledge, about four months—four or five months."

Were you asked those questions and did you give those answers?

Mr. Turkus: I object. That is a 1938 matter. It was the renting of a garage by another man. I don't see how it affects this witness' credibility.

Mr. Rosenthal: It will in the next question.

7570

Seymour Magoon—For People—Cross

The Court: Ask the next question and come down to the point. In all collateral matters you should come right down to the point, because there can be no answer in a collateral matter except yes or no, and the jury is bound by the answer; if the witness says no, that is the end of it.

Mr. Rosenthal: May I have an answer to my question?

7571

Q. Did you hear the question, Mr. Magoon, that I asked you? A. Yes, sir.

Q. Were you asked those questions and did you give those answers? A. Yes, sir.

Q. Did that fix the time better in your mind? A. I still think it was about 1938.

Q. Now, is it not a fact that you had a set of keys to that garage and stored the automobile that was used in the Schuman murder, isn't that a fact? A. Yes, sir.

7572

Q. And is it not a fact that you had stored a few cars in the garage—you personally had stored a few cars in the garage that had been stolen and were subsequently used in murders? A. On orders, yes, sir.

Mr. Rosenthal: I ask that that be stricken out. The first part is not responsive.

Mr. Turkus: I think that is important, since it affects credibility.

The Court: Let it stand.

Mr. Rosenthal: Exception.

The Court: Although it is a mighty tight question.

Q. Now, did you own an automobile? A. Will you repeat the question?

Q. In 1936? A. Repeat that, please.

Q. Did you own an automobile in 1936—did you own your own car in 1936? A. Yes, sir.

Q. What type of automobile was it? A. A Plymouth coupe.

Q. Was it a new car? A. Well, it was mostly new; it was given to me.

Q. Was that the first car you ever owned?

Mr. Turkus: I object. That does not affect his credibility. What is the difference?

The Court: Objection sustained.

Mr. Rosenthal: Exception.

Q. How long did you know Allie Tannenbaum? A. A few years.

Q. Can you not give us anything more definite than that, "a few years"—Do you mean to answer '33, '34, or approximately what year?

A. About eight years, nine years, ten years.

Q. Well, would you say around 1931 or 1932 you first met Allie Tannenbaum? A. Well, I would say '33 or '34.

Q. Well, it is '41 now, you understand? A. Yes, sir.

Q. You said eight, or nine, or ten years? A. Yes, sir.

Q. So that at the present time it has been definite in your mind as to when you met him, whether in '31 or '33, is that it? A. I said in '33 or '34.

7576

Seymour Magoon—For People—Cross

Q. Did you meet him at Saratoga and Livonia Avenue at any time? A. Yes, sir.

Q. Did he frequently— Question withdrawn.

Q. Did you see him at Saratoga and Livonia Avenue frequently during the years 1933, '34 and '35? A. Yes.

Mr. Turkus: I object. That does not affect his credibility.

The Court: It is not a question of his credibility at all.

7577

Mr. Turkus: Then that does not go to the issue of this case.

Mr. Rosenthal: I press the question. I submit it does.

By the Court:

Q. Was he a member of the combination? A. Yes, sir.

The Court: Let it go at that.

Mr. Rosenthal: I respectfully except.

7578

The Court: The record is pretty voluminous on that point. Rather than argue it, I will let you go ahead. I thought you had enough on it.

Q. Is it not a fact that Allie Tannenbaum was one of the persons whom you saw hanging around on the corner of Saratoga and Livonia, in the years 1934, '35 and '36? A. No, sir.

Q. Did you see him at Saratoga and Livonia Avenue in any of those years? A. I don't think so.

Q. Didn't you say a little while ago that you met him in 1933, in Brooklyn? A. Yes.

Q. Where did you meet him in Brooklyn in '32 or '33?

Mr. Turkus: I object. That is not the testimony.

The Court: Objection sustained. You cannot cross examine on collateral. It is only for the purpose of impeaching credibility. That is the rule of law. You can ask him as to any criminal association, with a yes or no answer. You can ask him as to any crime. You can ask him as to any dishonest act—anything that affects his credibility, but you must get directly down to the point.

7580

Mr. Rosenthal: I have another question in mind. I do not wish to disclose it now, but I will be glad to disclose it to your Honor. It is not pointed along that particular line at all. In view of the prior testimony of Tannenbaum, which I say I have a right to rebut, or any witness that may be called by the prosecution—

7581

The Court: I don't know what you are talking about. The ruling stands.

Mr. Rosenthal: Exception.

Q. Now, your shylocking business was conducted where? A. At what period are you speaking of?

Q. I am referring to the entire period of your shylocking business, where was it conducted

7582

Seymour Magoon—For People—Cross

from? A. At what place? From different places.

Q. Yes, at what place was it conducted? A. Amboy Street was one place.

Q. Amboy and what? A. Off Pitkin Avenue.

Q. On the street or in some store? A. In a pool room.

Q. What period of time was it conducted there? A. About 1931.

7583

The Court: If there is objection, I will sustain it. It is too far afield? Is there an objection?

Mr. Turkus: He has finished his answer. I might as well let it stand.

The Court: There is no sense in occasional ruling and then in the meantime have cross-examination on collateral matters.

Mr. Rosenthal: I except to that.

7584

The Court: The law is based upon sound reason, that if you are permitted to cross-examine upon matters which are far afield and which are simply collateral, relate only to credibility, the jury may lose sight of the main issue and not know what it is about.

Mr. Rosenthal: May I state the purpose of this?

The Court: No.

Mr. Rosenthal: I except.

Q. In 1936—

The Court: If you think it is necessary to go further along the line of impeach-

ment, it is your right to do so, although were the District Attorney cross-examining, the Court would be compelled at a certain point to restrain him lest it prejudices the rights of the defendant to a fair trial. But when a man has already admitted previous crimes, a number of murder combinations, and various other crimes, it looks to the Court as if it comes down to a flat foot proposition whether or not the jury will, notwithstanding the facts just mentioned, believe he is telling the truth on this particular occasion concerning this particular crime. That is all. The jury requires no further persuasion he is a criminal or that he is a murderer.

7586

Mr. Rosenthal: This particular line of questions goes directly to that point on testimony adduced.

The Court: As long as the record is replete with it now, you can go further with it, but come right down to the point.

7587

Mr. Rosenthal: I respectfully except to the Court's observation.

Q. In 1936 where was your shylocking business being conducted from? A. St. John's Place.

The Court: The Court, apparently, is wasting its breath. There is no objection.

Mr. Turkus: I don't know whether it is a preliminary question or what it is.

The Court: Do you object?

Mr. Turkus: He has answered. I will have to object to the next question.

7588

Seymour Magoon—For People—Cross

The Court: Don't go asleep.

Mr. Turkus: I am not asleep.

Mr. Rosenthal: May I respectfully except to the Court's observation to the District Attorney.

Q. Is it not a fact that your shylocking business in the years 1936, 1937 and 1938 and 1939 was conducted at St. John's Place and Buffalo Avenue?

7589

Mr. Tarkus: I object. May the record show I am awake?

The Court: Objection sustained.

Mr. Rosenthal: Exception.

Q. You testified on direct examination that you were at Saratoga and Livonia Avenue every day, on the corner there, didn't you?

Mr. Turkus: I object. That was not the testimony.

The Court: Objection sustained.

7590

Mr. Rosenthal: Exception.

The Court: The record speaks for itself, and that is the reason the objection was sustained. You are wasting time.

Mr. Rosenthal: I respectfully except to your Honor's observation.

Q. Is it not a fact that instead of your hanging out on Saratoga and Livonia, you hung out morning, noon and night during the period you testified on direct examination in this trial at St. John's Place and Buffalo Avenue?

Seymour Magoon—For People—Cross

7591

Mr. Turkus: I object to the form of the question.

The Court: Objection sustained; too far afield.

Mr. Rosenthal: Exception.

Q. Now, you testified in the Nitzberg trial about meeting certain people on the corner of Saratoga and Livonia Avenue, didn't you?

Mr. Turkus: I object. That has nothing to do with his credibility or the issue here.

7592

The Court: Objection sustained.

Mr. Rosenthal: Exception.

Q. Is it not a fact that in the Nitzberg trial, when you were questioned concerning those persons whom you saw at Saratoga and Livonia Avenues on the periods you were there, you failed to mention the name of this defendant Louis Capone?

Mr. Turkus: I object, that was in 1939, not within the issue.

7593

The Court: Objection sustained.

Mr. Rosenthal: Exception.

Q. Is it not a fact that in the case of The People against Strauss, when you were asked as to whom you had met on the corner of Saratoga and Livonia Avenues when you were there at that time, you did not say or mention the defendant Louis Capone as one of the persons?

Mr. Turkus: I object.

7594

Seymour Magoon—For People—Cross

The Court: Objection sustained.

Mr. Rosenthal: Exception.

Q. Now, when you were arrested, you say you were arrested when—in 1940, what month? A. I think it was March.

Q. The fact is you were arrested February 21st, weren't you charged with vagrancy?

Mr. Turkus: I object.

7595

The Court: Sustained as immaterial.

Mr. Rosenthal: Exception, this was brought out on direct examination.

The Court: Conviction, the number of arrests is not on trial.

Q. When were you convicted on the vagrancy charge? A. In March.

Q. Do you recall what part of March?

Mr. Turkus: Does that make any difference?

The Court: Is there an objection?

7596

Mr. Turkus: Yes, it does not make any difference what part of March.

The Court: Objection sustained.

Mr. Rosenthal: Exception. I submit to the Court these are all matters brought out on direct and I have a right to question him.

The Court: Do not "submit", just take your exception.

Mr. Rosenthal: All right, I will take my exception.

Q. How long after you were arrested and con-

Seymour Magoon—For People—Cross

7597

victed on the vagrancy charge was it before you went to the Bronx? A. Will you please repeat that question?

Q. How long after you were convicted on the vagrancy charge was it before you went to the Bronx? A. About nine weeks.

Q. During those nine weeks you were over on Riker's Island, were you, serving your two months sentence? A. Yes, sir.

Q. Now, after your sentence had been completed and you got as far as the warden's office, you say that somebody arrested you, is that right? A. Yes, sir.

7598

Q. Do you recall who the persons were that arrested you? A. No, sir.

Q. Did you know the detectives who arrested you? A. No, sir.

Q. Where were you brought from the warden's office to—where were you brought to from the warden's office? A. To Brooklyn.

Q. What part of Brooklyn? A. The Raymond Street Jail.

Q. Were you brought to the District Attorney's office first before you were brought to jail? A. No, sir.

7599

Q. You were brought directly to jail? A. Directly to jail.

Q. Were you apprised or told of the charge that was against you when you were brought over to the jail? A. Yes, sir.

Q. Was it a murder charge you were being brought over and lodged in jail on? A. No, sir.

Q. What charge was it you were brought over from the jail, to Raymond Street?

7600

Seymour Magoon—For People—Cross

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

Q. How long after you had been in Raymond Street jail did you first see anybody, either Judge O'Dwyer or anybody from his office or the police?

7601

Mr. Turkus: I object to the form of the question.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

Q. How long did you remain in Raymond Street Jail before you were taken out of there? A. About a week.

Q. Where were you taken from Raymond Street Jail? A. Up to the Bronx.

Q. While you were in Raymond Street Jail, before you were taken to the Bronx, did you receive any visit from District Attorney O'Dwyer or any of his assistants? A. No, sir.

7602

Q. Had you spoken to anybody connected with his office? A. No, sir.

Q. Had you spoken to anybody connected with the Police Department? A. No, sir.

Q. Now, when you were taken to the Bronx where were you first lodged? A. In the Concourse Plaza Hotel.

Q. You were taken to a room in the Concourse Plaza? A. Yes, sir.

Q. Who took you to this room in the Concourse Plaza Hotel? A. A policeman.

Seymour Magoon—For People—Cross

7603

Q. Do you know who the police were that took you there, by name? A. No, sir.

Q. Had you prior to that time asked to be taken to a hotel or asked to talk to anybody? A. Yes, sir.

Q. When you arrived at the Plaza Hotel, were you registered there in a room or a suite of rooms?

Mr. Turkus: I object to the form of the question was he registered.

7604

The Court: Objection sustained.

Q. Were you detained or kept there in a suite of rooms? A. In a room.

By the Court:

Q. You mean in custody? A. Yes, sir.

Q. Dewey's men? A. No.

Mr. Turkus: Judge Foley's men.

The Witness: Foley's men.

7605

Q. He was the District Attorney of the Bronx? A. Yes, sir.

By Mr. Rosenthal:

Q. When you arrived at the Concourse Plaza Hotel did you speak to anybody connected with either the Police Department—let me divide the question—when you arrived at the Concourse Plaza Hotel did you speak to anyone attached to either the Brooklyn District Attorney's office or the Bronx District Attorney's office?

7606

Seymour Magoon—For People—Cross

Mr. Turkus: I object to the double question, we don't get anywheres with that.

The Court: Objection overruled.

By the Court:

Q. Did you talk to anybody there from any District Attorney's office? A. Yes, sir.

Q. Which one—

7607

By Mr. Rosenthal:

Q. Which District Attorney's office are you talking about—what was the name of the man?

A. Mr. Foley and Mr. Breslin of the Bronx District Attorney's office.

Q. They were both there at that time? A. Yes.

Q. At that time was there a stenographer present? A. I do not recollect.

Q. This was in what month of 1940 that you were brought there, approximately, to the Concourse Plaza Hotel? A. May.

7608

Q. Did you see anybody writing down in a book while you were talking? A. I do not recollect, because I was in a "blizzard" that day.

Q. After you had spoken, not recalling whether it was taken down or not, did you remain in the hotel? A. I did.

Q. For how long a period did you remain in the Concourse Plaza Hotel? A. For a few months.

Q. During that time that you remained in the Concourse Plaza Hotel did you testify before a Grand Jury in the Bronx?

Mr. Turkus: I object to the question, what difference does it make; that does not affect his credibility.

Mr. Rosenthal: I want to show immunity of any charge in which he implicated himself.

Mr. Turkus: Why not ask him that.

Mr. Rosenthal: I will ask him but not the way you want me to.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

7610

Q. Were you called as a witness before any Grand Jury while you were up in the Bronx?

A. Yes, sir.

Q. At the time you were called as a witness was it in a matter in which you admitted your participation in? Yes or no. A. Yes, sir.

Q. At the time you were called as a witness were you asked to sign—I will withdraw that. Do you know what a waiver of immunity is? A. Well, I have an idea.

Q. Were you asked to sign any paper waiving immunity at the time you were called to testify before the Grand Jury? A. Yes, sir.

7611

Q. Did you sign a paper in which you waived immunity? A. Yes, sir.

Q. And admitted your participation? A. Yes, sir.

Q. Now, before you—while you were in the Bronx, that was in May, you say—question withdrawn. Was it in “May” you appeared before the Grand Jury—when was it? A. I don’t recollect when it was.

7612

Seymour Magoon—For People—Cross

Q. How long after you got to the hotel was it before you appeared before the Grand Jury?

Mr. Turkus: I object, that does not affect his credibility.

The Court: That was a different crime. What is the difference when the day was when he appeared before the Grand Jury as affecting credibility?

7613

Mr. Rosenthal: I can only ask one question at a time.

Mr. Turkus: It has been brought out he waived immunity.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

Q. At the time you made your statement to District Attorney Foley, in the Bronx, in May, or that you had your conversation with him, did you mention anything at all to him about the Rosen case, yes or no?

7614

Mr. Turkus: I object.

The Court: Objection overruled.

Mr. Turkus: He first has to be asked.

Q. (The Court) Were you asked anything about it?

Mr. Rosenthal: I object, not only to the Court's question but also to Mr. Turkus' statement.

The Court: I withdraw the question.

Mr. Rosenthal: I object to the interjection of the District Attorney, although it may not have been meant for that pur-

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7615

pose, as giving the witness an opportunity of formulating an answer. I ask that his interjection be stricken out.

The Court: I should have sustained the objection instead of overruling it. Objection sustained.

Mr. Rosenthal: I except. I made a motion with regard to the District Attorney's interjection. And I except to the Court's ruling.

7616

Q. Did you have more than one conversation with the District Attorney or his assistant in the Bronx? A. Yes, sir.

Q. How many conversations did you have covering what period of time? A. I am still having conversations with him.

Q. Up to what time was it before you first started to speak to Judge O'Dwyer in Brooklyn—what was the first month you started to speak to him? A. Will you please repeat that question?

Q. You said you had first a conversation with Mr. Foley and Mr. Breslin in the Bronx? A. Yes, sir.

7617

Q. Now, how long after your first conversation with Mr. Foley in the Bronx was it that you had your first conversation with either Judge O'Dwyer or any Assistant District Attorney from his office? A. Well, it was approximately two days.

Q. After the first conversation? A. With Mr. Foley?

By the Court:

Q. Did you tell Mr. Foley anything about the

7618

Seymour Magoon—For People—Cross

Rosen case? A. I told him that night about one that he was interested in.

Q. Please—did you tell Mr. Foley anything about the Rosen case? A. No, sir.

The Court: We will now take a recess until 1:30 p. m. Gentlemen, please do not discuss the case, let nobody talk to you about it, keep your minds open. Be back promptly at 1:30.

7619

7620

Seymour Magoon—For People—Cross

7621

AFTERNOON SESSION. TRIAL RESUMED

SEYMOUR MAGOON, resumed the stand and testified further as follows:

Cross-examination by Mr. Rosenthal (continued):

Q. Do you recall, just before recess, Magoon, you were asked the question by the Court in respect to whether or not you had told District Attorney Foley, at the time you were first questioned, about the Rosen case and your answer was "No". Remember saying that? A. Yes, sir.

7622

Q. You started to tell me just before recess—and I am merely repeating this so as to enable you to get the line of thought—that two days after you spoke to District Attorney Foley you first spoke to District Attorney O'Dwyer or somebody from his office. Is that right? A. Yes, sir.

Q. Where was that conversation held and with whom? A. In the Bronx D. A.'s office with O'Dwyer—

7623

Q. Are you finished? A. No, sir.

Q. All right, go ahead. A. Mr. Foley, and there was other people there.

Q. You were taken out of the hotel over to the District Attorney's office in the Bronx, is that right? A. Yes, sir.

Q. The Concourse Plaza, is it? A. Yes, sir.

Q. And then there you met District Attorney Foley, District Attorney O'Dwyer, and who were the other persons that were there? A. I didn't know them.

7624

Seymour Magoon—For People—Cross

Q. Was one of them Captain Bals? A. I don't think I recognized anyone.

Q. Since then have you met Captain Bals on occasions? A. Yes, sir.

Q. Was he there, now that you do know him, at that time do you recollect? A. I don't think he was.

7625

Q. Were any of the assistants, either Mr. Turkus or Mr. Klein or Mr. Joseph, there with District Attorney O'Dwyer? A. I don't recollect who was there then.

Q. Was Assistant District Attorney Hefferman there? A. I say I don't recall who was there.

Q. You do not recollect? A. Outside of the outstanding people who were there.

Q. Before District Attorney O'Dwyer had come, I think you told us that District Attorney Foley said that he would help you, is that right? A. Yes, sir.

7626

Q. And when you started to speak with District Attorney O'Dwyer, was there a stenographer there taking down what was being said? A. There was somebody who was writing there. Whether it was a stenographer or not, I don't know.

Q. You testified in the Goldstein-Strauss case, as you said before, did you not? A. Yes, sir.

Q. At that time were you asked regarding—let me withdraw that temporarily.

Q. You say there was somebody there writing down in a book, is that right? A. Yes, sir.

Mr. Turkus: I object. I don't think he said "a book."

Seymour Magoon—For People—Cross

7627

The Witness: Somebody was writing there at the time.

Q. You just said "Yes, sir" when I asked you whether they were writing in a book, didn't you, before Mr. Turkus got up? A. They were writing in something, Mr. Rosenthal. If it was a book or papers, I don't recollect, but they were writing.

Q. Were you asked questions and did you give answers? A. Yes, sir.

7628

Q. Yes, or no, were you then asked or did you then say anything about the Rosen case? A. No, sir.

Q. This was then, so as to fix the time, in the month of May, 1940; is that correct? A. Yes, sir.

Q. Have you any idea of whether it was the latter part of the month or the early part? A. I don't recollect, but I know it was about the month of May.

Q. After you had spoken, were you returned to the hotel again? A. Yes, sir.

7629

Q. Did you go back to the hotel? And how long was it before you were next questioned by anybody? How many days, hours or weeks elapsed before you were next questioned by anybody? A. The next day.

Q. And where was that questioning? A. In the Bronx.

Q. And was any of the Assistant District Attorneys or the District Attorney of Brooklyn present? A. No, sir.

Q. That was just questioning by District Attorney Foley? A. And Mr. Breslin.

7630

Seymour Magoon—For People—Cross

Q. I mean Bronx officials? A. From the Bronx, yes.

Q. Nobody from Brooklyn? A. No, sir.

Q. Let me ask you this so as to come down to the Brooklyn proposition. When next were you questioned by anybody from Brooklyn, any Assistant District Attorney or the District Attorney of Brooklyn; how long a time later? A. I would say a couple of months, roughly.

7631

Q. So that from the time that you first appeared in the District Attorney's office in the Bronx, when Judge O'Dwyer was there with District Attorney Foley, you were not questioned by anybody from Brooklyn—I am not confining myself only to the District Attorney; I am talking of anybody from the District Attorney's office of Brooklyn—is that clear? A. Yes, sir.

Q. For a period of two months? A. Approximately, yes.

7632

Q. On the first occasion that you were questioned by District Attorney O'Dwyer in the presence of District Attorney Foley, when you say somebody was there writing down, did you answer questions that were asked of you by Judge O'Dwyer? Yes or no. A. Yes, sir.

Q. Were you asked to sign anything that you were asked about at that time? A. I don't think so.

Q. Well, is there a doubt in your mind, Mr. Magoon, as to whether you did or you did not? A. Yes, there is a slight doubt.

Q. Now, then, for the two months that succeeded your first interview, were you still confined in the Concourse Plaza? Were you still confined in that hotel? A. Yes, sir.

Seymour Magoon—For People—Cross

7623

Q. During the two months from May until, that would be, July that you next saw anybody from District Attorney O'Dwyer's office, is that right?

A. I would not specify but—

Q. Approximately? A. Approximately then.

By the Court:

Q. Is not that hotel right opposite the Bronx Court House? A. Yes, sir.

Q. And the District Attorney's office? A. Yes, sir.

7634

By Mr. Rosenthal:

Q. During those two months, without going into it at any length, were you questioned on a number of occasions by the District Attorney's office of the Bronx? A. Yes, sir.

Q. At any time was your questioning reduced to writing or was there a stenographer present while you were being questioned on these different occasions by the District Attorney in the Bronx? A. Yes, sir.

7635

Q. Did you sign any statement for the District Attorney of the Bronx? A. I signed a flock of papers on other occasions but I don't recollect what they were. I never read them.

Q. You merely put your signature to it on the strength of being told so by the District Attorney, without reading them; is that right? A. Yes, sir.

Q. At any time during those two months—just yes or no to this,—were you asked any questions by any of the officials of Bronx County in re-

7636

Seymour Magoon—For People—Cross

spect to the Rosen case; yes or no? A. Will you please repeat that question?

Q. Yes, I will repeat it. At any time during the number of questionings that you had with officials of the Bronx District Attorney's office, were you asked any questions in respect to the Rosen case? That is before coming to Brooklyn in about July. A. No, sir.

7637

Q. And at any time prior to your coming to Brooklyn, did you say anything to any of the officials of Bronx County about the Rosen case? Yes or no.

Mr. Turkus: I object to the form of the question. He said he was not asked.

Mr. Rosenthal: Again, Judge—

Mr. Turkus: I am repeating your question. I don't wish to quarrel.

Mr. Rosenthal: I am not quarreling.

By the Court:

7638

Q. Did you volunteer anything to the District Attorney of the Bronx about the Rosen case? A. No, sir.

By Mr. Rosenthal:

Q. Now, then, in July or thereabouts, were you taken to Brooklyn by somebody? We are now coming down to your first interview with the District Attorney's office in Brooklyn. Were you taken to Brooklyn by somebody or did District Attorney O'Dwyer or one of his assistants come to the Bronx? A. I was taken to Brooklyn.

Q. And do you recall who brought you to Brooklyn? A. Yes, sir.

Q. Who was it brought you to Brooklyn? A. The Bronx police officers.

Q. At that time you were confined in a hotel, is that right? A. Yes, sir.

Q. I assume you came to the District Attorney's office in Brooklyn? A. Yes, sir.

Q. Whom did you see there on your first visit? This is not any trap question; I mean the first visit after your first talk in the Bronx. Do you understand that?

7640

Mr. Turkus: I object to the question as to form.

Mr. Rosenthal: All right, I withdraw it.

Q. Who was present on your first visit to Brooklyn, to the D. A.'s office? Is that clear to you? A. Yes, sir.

Q. Will you name the persons who were present? A. Judge O'Dwyer.

Q. Yes. A. Mr. Klein.

Q. That is Mr. Sol Klein who is seated at the counsel table here? A. Yes, sir.

7641

Q. Assistant District Attorney, right? A. Yes, sir. Mr. Heffernan.

Q. Yes. A. There may have been others.

Q. Wasn't there a stenographer there writing down notes? A. I would not know if it was a stenographer or not but there was somebody—

Q. Wasn't there a person there—

Mr. Turkus: He is finishing.

Mr. Rosenthal: All right, let him finish.

7642

Seymour Magoon—For People—Cross

Q. Finish your answer. A. But there was somebody there writing.

Q. Was it a man or a woman? A. A man.

Q. Were you asked questions and did you make answers? A. Yes, sir.

Q. And did this person write down what you were saying?

Mr. Turkus: I object.

Mr. Rosenthal: I withdraw it and put it this way:

7643

Q. Was this person writing, using a pencil, while you were talking and any of the persons, District Attorney O'Dwyer, Mr. Klein, or Mr. Heffernan, was talking? Was that person writing? A. I was not watching him all the time.

Q. Well, when you were watching him, was he using his pencil on paper? A. On occasions, yes.

Q. Were you asked these questions in the Goldstein-Strauss trial and did you give these answers:

7644

"Q. (On page 480, starting at folio 1440) When you came over to Brooklyn after seeing Mr. Foley, you saw Judge O'Dwyer and he asked you what you knew about the case, is that right? A. Yes.

"Q. And you made a statement to him, is that correct? A. Yes.

"Q. Was there a stenographer present taking down questions and answers that were being propounded to you? A. Yes, sir."

Were you asked those questions and did you give those answers?

Mr. Turkus: So the record may be clear, that case was the Feinstein case where the victim was Irving Feinstein. "The case" may be ambiguous and confusing, not only to the jury but possibly to the record.

The Court: Sustained.

Mr. Rosenthal: I respectfully except, sir.

Q. This occasion that you were first questioned in the month of July or thereabouts by Judge O'Dwyer—

7646

The Court: Will you suspend a minute?

Mr. Rosenthal: Yes.

The Court: Mr. Turkus, have you "Q" and "A" on this case?

Mr. Turkus: No, your Honor.

The Court: If you had, I might just as well be reading it.

Mr. Turkus: I have no "Q" and "A".

The Court: Are you sure the office has none?

7647

Mr. Klein: Quite certain, your Honor. I was there. I made personal notes of the questioning.

The Court: Check up and be sure.

Mr. Klein: I have. We have gone through every piece of paper before we have come into court so that if they called for anything they would get it.

Mr. Rosenthal: I am going to press questions and then ask and if there is none in existence, I want it on the record.

7648

Seymour Magoon—For People—Cross

Q. Did you speak to Judge O'Dwyer himself in Brooklyn in July or was it his assistants that were conducting the questioning and answers of you, or were they all there? A. Judge O'Dwyer was there. They were all there.

Q. In other words, each one of them interjected at times questions and you would answer what any one of them asked you, is that correct? A. Yes, sir.

7649

Q. Answer this question yes or no, sir: At that time in the month of July, 1940, were you asked any questions about the Rosen case, your first visit to Brooklyn in July of 1940? Yes or no. A. No, sir.

Q. What is the answer? A. No, sir.

Q. Answer this question yes or no: At that time did you volunteer to either Judge O'Dwyer, Mr. Klein, Mr. Heffernan, or any other person who was at that examination, anything about the Rosen case? Yes or no. A. No, sir.

7650

Q. Did you on that occasion sign the paper, sign any paper, after your examination was concluded in respect to the subject matter—wait a minute, I will make this clearer—did you after the examination was over, that is after the questions and answers, sign any paper containing the substance of what had been said by you and the questions that were asked at any time? Is that clear to you? A. Yes, sir.

Q. Did you sign such a paper? A. I signed papers there on a few occasions but I just don't recollect if it was on that occasion or the next day or a day later or a week later but I have signed a lot of papers there.

Q. For Judge O'Dwyer you signed a lot of papers? A. Yes, sir.

Q. As well as for District Attorney Foley? A. That is right.

Q. The papers which you signed, were they in question and answer form, sir? Do you understand what I mean? A. Yes, sir.

Q. Well, if you understand, would you mind answering, were they in question and answer form?

Mr. Turkus: Which ones?

7652

A. I did not read them. I just signed them.

Q. While you were looking and placing your signature on these papers at any time, did you see there on that paper "Q (period)" and "A (period)", meaning question and answer? Did you see it above your signature? A. I never looked at that, counselor.

Q. Well, before you signed these papers were you told by anybody, Judge O'Dwyer or any other person in his office, the nature of the paper which you were about to sign? Were you told of that fact before you signed the paper? Yes or no. A. Yes, sir.

7653

Q. Were you told at any time that the papers which you were asked to sign were statements of what you had said to any of the persons in the District Attorney's office of Brooklyn and the answers which you had made to those questions? Were you told that at any time? A. I was told it is my statement.

Mr. Rosenthal: Now I ask for the pro-

7654

Seymour Magoon—For People—Cross

duction of any statement in respect to the Rosen case.

By the Court:

Q. Was that in the Rosen case? A. No, sir, I don't specify in any cases.

Q. Do you know what case it was? A. No, sir.

Mr. Rosenthal: Let me pursue it further before I make my demand, sir.

7655

By Mr. Rosenthal:

Q. After your first talk with Judge O'Dwyer and his assistants, were you returned to the Bronx or did you remain in Brooklyn? A. Returned to the Bronx.

Q. In the custody of this police officer I assume? A. Police officers.

Q. And you went back to the hotel? A. Yes, sir.

7656

Q. How long a time elapsed before you were next questioned by anybody from the Brooklyn District Attorney's office? A. I think it was at shorter intervals then.

Q. So as not to prolong it—about how many times, covering what period, was it that you spoke to officials of the District Attorney's office in the year 1940? We will take only the year 1940 now from July up to January, 1941; in Brooklyn, I am confining myself. Is my question clear to you? A. Yes, sir.

Q. About how many times? A. Quite a few times.

Q. Well, would you say once a week, once a

month, once in two months; about how often?

A. I would say all told better than twelve times.

Q. You are confining yourself up to January 1st, 1941, are you? A. Yes, sir.

Q. That would be from July to January, would be about twice a month; is that about right?

Mr. Turkus: I object to that because that may give a confusing answer.

Mr. Rosenthal: I withdraw it. There is no idea of confusing him.

7658

Q. How many times elapsed between each talk, about? A. I cannot say that.

Q. Was it practically at the same intervals that you would go back to the Brooklyn District Attorney's office? A. No, sir.

Q. Do you understand what I mean? A. I understand what you mean.

Q. On these occasions when you went back there on these approximately twelve occasions, were there always the same persons there questioning you that you have mentioned, Mr. Hefferman, Mr. Klein and Judge O'Dwyer? Were they the people who were there and questioned you? A. Judge O'Dwyer wasn't. There was others there after the first couple of times.

7659

Q. Let us get that clear. The only time Judge O'Dwyer was there was on the first occasion? A. On the first or second occasion.

Q. I mean first in Brooklyn. First or second in Brooklyn? A. Yes.

Q. And from that time on— A. There was assistants.

7660

Seymour Magoon—For People—Cross

Q. There were others than Judge O'Dwyer; is that right? A. Yes.

Q. The assistants were Mr. Klein, Mr. Heffernan. Did Mr. Turkus— A. Mr. Turkus.

Q. Mr. Joseph also? A. Yes, sir.

Q. On these occasions when you were being questioned, did you see a person there writing down on paper? A. Not on all the occasions.

7661

Q. On how many of the occasions that you were there did you see, of those twelve, somebody writing on paper? A. A few.

Q. When for the first time was it that you mentioned anything about the Rosen case? When was the first time that you mentioned anything about the Rosen case? A. Oh, quite a few months ago.

Q. That does not mean anything, Mr. Magoon. This is now November. Would you say it was in June of 1941 that you first mentioned about the Rosen case? A. No, I will say it was before June.

7662

Q. Would you say May? A. I would not say but I will say it was before June that I mentioned it.

Q. Well, would you say that it was after April and before June of 1941 that you first mentioned anything about the Rosen case to District Attorney O'Dwyer's office? A. No; I will say it was after January and before June.

Q. But you cannot fix the exact date? A. No, sir.

Q. Can you tell us how many additional meetings or questionings you had in Judge O'Dwyer's office in 1941 before you first mentioned the Rosen case?

Mr. Turkus: I object to the form of the question.

Mr. Rosenthal: All right, I will make it clear. If you do not understand it, maybe he does not, so I will make it so both of you understand it.

Q. You said you had twelve conversations about, or approximately, up to January 1st, 1941; is that right? A. Yes, sir.

Q. You said it was later than January 1st, 1941, when you first spoke about the Rosen case; is that right? A. Yes, sir.

7664

Q. How many other questionings of you was there in the District Attorney's office in Brooklyn after January of this year before you first mentioned the Rosen case? Is that clear? A. Yes, sir. A few.

Q. You cannot give us an approximate number, to the best of your recollection? A. I would not try.

Q. When you were first spoken to by Judge O'Dwyer way back in July, 1940, he told you if you told him everything you knew he would help you, didn't he? A. Yes, sir.

7665

Q. That was what he said then? A. Yes, sir.

Q. When you were being questioned about the Rosen case in 1941, who was it that conducted the questioning of you? A. Will you please repeat the question?

Q. Yes, I will repeat it. You say in 1941, after January and before June, you were questioned, after you had had a few conversations, by somebody in the District Attorney's office re-

7666

Seymour Magoon—For People—Cross

garding the Rosen case; is that right? A. I still don't get that.

Q. All right, I will make it as plain as I can for you. You said there came a time in 1941 when you said to the District Attorney something about the Rosen case? A. Yes, sir.

Q. Is that clear to you? A. Yes, sir.

Q. Who was it that was present when you made your first declaration about the Rosen case? A. Turkus.

7667

Q. Mr. Turkus? A. Excuse me—Mr. Turkus, Mr. Klein and a few other misters.

Q. A few other misters you cannot recall, is that it? Was one of the misters Captain Bals? Do you recall that? A. No, sir.

Q. I want to be fair to you. When you say "No, sir", do you mean you don't recollect or he was not there? A. He was not.

Q. Was there a person there taking down or writing with a pencil when you were being questioned? A. Yes, sir.

7668

Q. And was the questioning in respect to the Rosen case, a question asked by one of these assistants of you and you responding in answer form? A. Yes, sir.

Q. And how long a time did it take, approximately, for the questioning in respect to the Rosen case on this occasion when you were in the District Attorney's office in Brooklyn, in this year? Can you recall, about? A. I was a few hours there at least.

Q. A few hours? A. Yes, sir.

Q. During that entire period of time there was somebody there writing with a pencil on a piece of paper of some character or book; is that right? A. Yes, sir.

Mr. Rosenthal: Now I ask the District Attorney to produce the statement made by this man in 1941 when first questioned in respect to the Rosen murder.

Mr. Turkus: There is no "Q" and "A" statement of this witness.

The Court: You may have a narrative. It makes no difference whether it is "Q" and "A" or not.

Q. Were you asked to sign that paper, do you recall? A. I don't think so.

7670

Q. Before you said you were asked to sign a number? A. Yes, sir.

Q. Containing your statements, containing what you had told the District Attorney? A. Yes, sir.

Q. You don't definitely recall whether this was one of them that you were asked to sign; is that right? A. That is right.

Mr. Rosenthal: I call for the production of the statement made in the early part of 1941, according to this witness.

7671

The Court: Any narrative, if signed, may be seen by the Court.

Mr. Turkus: We will give the Court anything we have got. We have got them on several matters, including a memorandum of information on the Rosen matter.

The Court: Signed?

Mr. Turkus: No, they are not signed.

The Court: Then they are of no value unless authenticated.

Mr. Turkus: May I state the purpose

7672

Seymour Magoon—For People—Cross

of the manner in which we have conducted the investigations?

Mr. Rosenthal: No, no.

Mr. Turkus: It is important that there be no confusion here in the minds of the jury.

Mr. Rosenthal: You bring it out from the witness.

Mr. Turkus: The witness does not know how we handled things in the District Attorney's office.

7673

Mr. Rosenthal: I object to any statement going on this record, sir, which would be in the nature of testimony.

The Court: These matters are confidential.

Mr. Rosenthal: I do not want his confidential notes.

The Court: Pardon me. Any statement in response to a question where the text is actually taken down by a stenographer or written in longhand, in question and answer form, may be read by the Court and, if found to contain something contradictory which may be shown to defense counsel, then the Court will pass it on.

7674

Mr. Turkus: I will hand you now whatever I have.

The Court: Likewise anything in the nature of narrative but only provided that is signed.

Mr. Turkus: That is narrative. We have a certain method of taking examinations.

The Court: I know the method.

Mr. Turkus: All right.

Mr. Rosenthal: That is their trial memorandum I assume.

Mr. Klein: No, that is not our trial memorandum.

The Court: This is in the nature of a trial brief.

Mr. Klein: It is not.

Mr. Rosenthal: I am only taking the Judge's word for it.

The Court: This is just made from notes.

Mr. Turkus: Yes.

The Court: This may not be revealed. This is strictly the property of the prosecution.

Mr. Turkus: As far as I am concerned, I have no objection.

Mr. Rosenthal: All right, we will go further. I take it the answer is there is no signed statement of this man.

Mr. Klein: In the Rosen case, that is correct.

The Court: You might check up again at the office about that. You may have something in the files.

Mr. Klein: I will check, but I am quite certain it was not done.

The Court: A memorandum in narrative form that was signed.

Mr. Klein: I know there is no such statement signed.

The Court: All right.

Q. It is true, Mr. Magoon, what you said before that you actually did sign statements for the

7678

Seymour Magoon—For People—Cross

District Attorney's office in Brooklyn which were told to you to be your statements to them of occurrences, whatever they might have been; is that correct, sir? There is no question about that, is there? A. I signed papers—

Q. Do you understand? Yes or no.

Mr. Turkus: Let him answer.

Q. All right, answer it. Go ahead.

7679

The Court: May I advise something?

Mr. Rosenthal: Yes, your Honor.

The Court: Go ahead with your examination.

Mr. Rosenthal: I will repeat the question. You objected to it so I will withdraw it.

Q. Did you not tell me a few minutes ago, Mr. Magoon—

7680

The Court: Is this man held under an indictment or is he held under a commitment order as a material witness?

Mr. Turkus: He is held up in the Bronx by Judge Foley up there on a charge of murder.

Mr. Rosenthal: Now, wait a minute.

Mr. Turkus: Now wait. I did not say indictment.

Mr. Rosenthal: This man is not under indictment in the Bronx at all.

Mr. Turkus: He signed a waiver of immunity.

The Court: What order is he committed under?

Mr. Turkus: Judge Foley has it. I don't know technically.

The Court: You don't know. Because if he is held as a material witness, it is quite likely that from time to time he has signed vouchers, being entitled to daily compensation under the law.

Mr. Turkus: I do not know. That is up in the Bronx.

The Court: Purely speculative as to what he signed but there is no evidence here yet that he has signed a "Q" and "A".

Mr. Rosenthal: I must except to your Honor's statement. My questioning has been confined to Brooklyn, not what he did in the Bronx, and, of course,—I do not say that Mr. Turkus wilfully made this statement,—I think the record should be clear that this man is not held on any murder charge in the Bronx; he is merely held as a material witness.

Mr. Turkus: Let him state what it is. I do not know technically how Judge Foley holds him. I know this, he is in jail and we have him when we need him. Let us go that far with him and there won't be any misunderstanding.

The Court: You cannot pit the word of the District Attorney against the word of this witness on the question of depositions. I know you would not want to do that.

7684

Seymour Magoon—For People—Cross

Mr. Rosenthal: I have no intention of pitting anybody's word.

The Court: If the District Attorney, upon checking up at the office, finds any paper whatever signed by this witness, let it be brought to the court on Monday morning.

Mr. Klein: We will make a further check.

Mr. Turkus: I will instruct Mr. Joseph.

7685

The Court: I want a thorough search made.

Mr. Turkus: Yes.

Mr. Rosenthal: Would I then have the privilege, if concluded before then, to recall him?

The Court: You may then, if it is so indicated, recall the witness.

Mr. Rosenthal: We will pass this subject then.

7686

Q. In respect to the Rosen case, did you ever appear at any time before any Grand Jury, at any time up to the present day? A. No, sir.

Q. Did you appear before the Grand Jury after this trial started?

Mr. Rosenthal: (To Mr. Turkus) Did he?

Mr. Turkus: He did not.

Mr. Rosenthal: Then I won't press it.

Q. After July or thereabout, whenever it was that you fix as the date when you spoke about the Rosen case—

Mr. Turkus: That is confusing on the record. Will you revise it?

Mr. Rosenthal: Let me put it more plainly. I do not want anything confusing.

Q. You said that you recall the first time that you were asked about the Rosen case, or spoke about it, was about two months after May, didn't you?

Mr. Turkus: I object to it. He said it was not. He said it was after January of 1941 and before June.

7688

Mr. Rosenthal: Let us get it straight, Judge.

Q. When did you say that you first spoke to anybody about the Rosen case, approximately?

A. After January and before June.

Q. The exact month you cannot tell us? A. No, sir.

Q. After your first conversation in respect to the Rosen case, and confining yourself to the Rosen case, did you have any later conversations with any of the personnel of District Attorney O'Dwyer's office? A. Will you please repeat that question?

7689

Q. Let us put it this way—

The Court: Staff.

Mr. Rosenthal: I will reframe it.

Q. After the first conversation which you had, whatever the month was, did you again talk at any time with any of the assistants of Mr.

7690

Seymour Magoon—For People—Cross

O'Dwyer in respect to the Rosen case? A. Yes, sir.

Q. How many times, and covering what period? A. On a few occasions.

Q. Well, when you say "a few," would you say about four or five? A. About six or seven.

Q. And the first time after this first conversation was about how long after; a week, a month? A. A few days.

7691 Q. And your last time was how long before today? Approximately? A. Approximately?

Q. Yes. You don't have to give me the exact day, just the approximate time. A. About four or five months.

Q. No, I don't think you understand me. Four or five months ago was the last time you spoke? A. Before today, yes.

Q. And you have not spoken to anybody in the District Attorney's office about the Rosen case for the last four or five months: is that correct? A. Yes, sir.

7692 Q. Regarding your place of confinement, when were you removed, if at all, from the Concourse Plaza Hotel? A. After I was there about seven months.

Q. And then you were removed to Bronx County Jail? A. Yes, sir.

Q. Were you removed to the civil part of the jail? No, sir.

Q. Are you in the jail where people charged with crime are? A. Yes, sir.

Q. Segregated from other people? A. Yes, sir.

Q. Is that right? A. I was.

Q. You are there—other than being on the

stand now, that is where you are confined now, isn't it? A. In the Bronx County Jail?

Q. Yes. A. Yes, sir.

Q. And you say there are policemen on guard there all day and all night, in the Bronx County Jail? A. In the Jail?

Q. Yes. A. Outside the Jail.

Q. I understood you to say you had a 24-hour guard. Did you say that? A. While I was in the Concourse Plaza, I did.

Q. But while you are in the jail there is no guard—that is what I want to get clear—other than the guard of the jail? A. That is right.

Q. Can you tell us the month that you were transferred to the Bronx County Jail? About? A. About October or November.

Q. Of 1940? Last year? A. Yes, sir.

Q. Or this year? A. Last year.

Q. And you have been there ever since? A. Yes, sir.

Q. On this trial you told this jury that you know the defendant Capone, is that right? A. Yes, sir.

Q. How long do you know the defendant Capone? A. Quite a few years.

Q. Well, give us an idea: five years, six years, four years, seven years? Give me your best recollection. A. Oh, about eight or nine years.

Q. And you mentioned, did you not, on this trial that you were associated with Strauss, Goldstein, Reles, and others, including Capone, as The Combination. That is what you said on this trial: is that right? A. Yes, sir.

Q. You further said on this trial, did you not, that you were working for a salary for this

7696

Seymour Magoon—For People—Cross

Combination. That is what you told this jury, is that right? A. Yes, sir.

Q. And you also told this jury that you were only an employee; you were not in business with any of these people at any time. Did you tell them that?

Mr. Turkus: I object to the form of the question.

7697

Q. Did you tell this jury that you were merely an employee and were not in business with any of these men at any time?

Mr. Turkus: I object to that. That is not the testimony.

The Court: Sustained.

Mr. Rosenthal: Exception.

Q. Were you merely an employee of these men?

The Court: What men?

7698

Q. Whom you mentioned as comprising The Combination.

The Court: He said he was a member of The Combination.

Mr. Rosenthal: He said that he worked for The Combination, is the extract that I have.

Mr. Turkus. Mr. Rosenthal used the words "at any time." That was not the testimony. He said he was a member of The Combination.

Seymour Magoon—For People—Cross

7699

Mr. Rosenthal: There is no such testimony at all. I have the printed record, which is entirely different.

The Court: He can say whether he was employed by or worked together.

By the Court:

Q. Did you work with them or for them? A. With them and for them.

Q. Both? A. Yes, sir.

Q. What was your salary? A. I started at \$40 a week.

7700

Q. Speak loud. A. I started at \$40 a week.

Q. And went up to how much? A. \$75.

By Mr. Rosenthal:

Q. You were in the shylock business for a period of ten years—you were in the shylock business by yourself conducting your place from Buffalo and St. Johns; is that right? A. Yes, sir.

Q. And you had been in that business at times with a partner whom you named as Bobby Burns, for a period of upwards of 10 years; isn't that true? A. Him and others.

7701

Q. Did you, in answer to my question, say that you conducted the shylock business and that Bobby Burns was merely a partner for a short period of time with you? Did you say that when I asked you this morning?

Mr. Turkus: The record speaks for itself.

A. The record speaks for itself.

7702

Seymour Magoon—For People—Cross

The Court: Sustained.

Mr. Rosenthal: Exception.

Q. You were in business with Goldstein at one time, weren't you? A. What Goldstein?

Q. Martin (Buggsy) Goldstein, were you in business with him? A. Yes, sir.

The Court: Pinball?

The Witness: No, sir.

7703

Q. You were in business with Strauss, weren't you? A. Yes, sir.

Q. You were in business with Reles also, weren't you? A. Yes, sir.

Q. You were asked in the Nitzberg trial, weren't you, at page 238 and 239, as to whom you had been in business with. Let me withdraw that first.

And you mentioned as being the persons whom you were in business with the following persons, did you not; (page 238 and 239) I ask you now were you asked these questions and did you give these answers in the Nitzberg trial, commencing at folio 713:

7704

"Q. Mr. Magoon, you were in business with Goldstein, weren't you? A. Yes, sir.

"Q. And you were in business with Strauss also, weren't you? A. That is, I worked for them.

"Q. Yes. A. Yes.

"Q. You were in business with them, weren't you? A. Yes, sir.

"Q. And Reles was also interested in that business too, wasn't he? A. Yes, sir.

"Q. And the whole bunch of you there, Reles,

Strauss, Goldstein and yourself, were more or less partners in the business, weren't you? A. Yes, sir.

"Q. Well, how long were you and Reles in partnership? A. Would you kindly repeat that?

"Q. How long were you and Reles in partnership? A. I was never partners with Reles."

Were you asked those questions and did you give those answers?

Mr. Turkus: There is nothing inconsistent with that.

7706

The Court: Sustained.

Mr. Rosenthal: I respectfully except.

Q. In the Nitzberg trial, which occurred in 1941, when you were asked concerning the persons whom you were in business with, did you mention the name of Louis Capone at all?

Mr. Turkus: Objected to. The reading of the full question shows that the questioner put certain names to him and he made response, that the questioner did not put the name of Capone to him. That is all those questions and answers indicate.

7707

The Court: Sustained.

Mr. Rosenthal: I respectfully except. So as not to waste any time here, I offer to prove here that this witness never mentioned the name Capone in that trial in respect to his business or activities. Your Honor sustains that line of questions. I respectfully except.

7708

Seymour Magoon—For People—Cross

Mr. Turkus: I do not want a bad record, your Honor. That offer of proof was bad. If he has got any other proof, let him submit it.

The Court: The Court sees through it.

Mr. Rosenthal: I respectfully except to the Court's remarks.

7709

The Court: You will be permitted to show whether or not, in response to a question which called for such information, he omitted to give that information.

Mr. Rosenthal: I respectfully except to what your Honor says I am limited to, the manner in which I am limited to prove that particular point.

The Court: I said "liberty", not "limited." The fact that a man fails on a certain occasion to mention somebody's name means nothing unless it was shown that the information was called for by some question or some event.

7710

Mr. Talley: I except to your Honor's statement.

Mr. Rosenthal: I except.

The Court: I don't know what the exception is about, but inasmuch as the statement is considered valueless, it is withdrawn and the jury is instructed to disregard it.

Mr. Rosenthal: The exception is that that is a question of fact for the jury, not for your Honor's interpretation of the fact.

The Court: What are you worrying about.

Seymour Magoon—For People—Cross

7711

Mr. Rosenthal: That is the exception I am taking and the reason for it.

The Court: The jury has nothing to do with rulings on evidence.

Mr. Talley: It is your Honor's observations when you make the rulings, to which I take my exception.

The Court: Don't argue the rulings.

Mr. Talley: I do not intend to argue, but I intend to explain, in view of your Honor's statement.

7712

The Court: You are not going to do any explaining. You are only making a speech to the jury.

Mr. Talley: I am not making a speech to the jury. I am addressing you.

The Court: Then sit down.

Mr. Talley: I intend to sit down when I finish what I have to say.

By Mr. Rosenthal:

Q. On this trial you were asked, at page 2318, whether you took orders from your four employers, including Reles. Do you recall being asked that?

7713

Mr. Turkus: Objected to. This record speaks for itself.

The Court: Sustained.

Mr. Rosenthal: This is cross-examination, sir, and laying a foundation for a prior inconsistent statement, and in order to lay that foundation I must first ask him whether or not he did not so testify.

7714

Seymour Magoon—For People—Cross

The Court: The objection is sustained.

Mr. Rosenthal: I respectfully except, sir.

Q. Was Reles one of your bosses? A. Yes, sir.

Q. Did Reles give you orders? A. Yes, sir.

Q. Were you asked these questions on the Nitzberg trial and did you give these answers (page 239, folio 715):

7715

"Q. You were interested in the business that Reles was doing, weren't you? A. No, sir.

"Q. Never had anything to do with Reles? A. He was interested in my business.

"Q. He was more or less your boss, wasn't he? A. No, sir.

"Q. You never did any jobs with him at all? A. No, sir.

"Q. At no time? A. No, sir."

Were you asked those questions on the Nitzberg trial and did you give those answers in respect to Mr. Reles? A. If it is there, I have given it.

7716

Q. What is your recollection? This was only a few months ago. Did you, in response to questions which I have now propounded to you, give those answers, to your best recollection? Yes or no? A. I says if it is there, I have said that.

Mr. Rosenthal: I ask that the answer be stricken as not responsive.

The Court: Strike it out. Do you remember those questions and answers? Yes or no?

The Witness: Not very clearly, your Honor.

Seymour Magoon—For People—Cross

7717

Q. Now then, if you did testify in the Nitzberg trial— Withdrawn.

Mr. Rosenthal: You concede that I correctly read from the minutes?

Mr. Turkus: If you say it is correct, that is enough.

Q. Upon the concession of the District Attorney that I have correctly read from the printed record in that case, I will now say to you, Mr. Magoon, you did say that according to the record of the Nitzberg trial. Now do you say that you made those answers to those questions? It is in the record. A. Then I have said it.

7718

Q. That was not true, was it? A. It was true.

Q. All right. You did not take any orders from Reles since May of 1941, when Nitzberg was tried, did you?

Mr. Turkus: I object to that.

Mr. Rosenthal: I want to confine him right up to the present minute.

7719

Mr. Turkus: You mean since he is in the Bronx County Jail?

Mr. Rosenthal: Yes.

Mr. Turkus: Are you serious with that question? Go ahead.

The Court: There is no objection?

Mr. Turkus: No objection.

Q. Did you? A. Will you repeat that question, please?

7720

Seymour Magoon—For People—Cross

By the Court:

Q. Since you have been locked up, have you been taking orders from Reles? A. No, sir.

By Mr. Rosenthal:

Q. You did not go out on any of the baseball games, did you, at any time? A. No, sir.

7721

Q. You say that you were hiding in a farm of a man Mannesse, a tomato farm? I will repeat the question. You said you were hiding out in a tomato farm in Milton, New York, in 1936; is that right? Is that correct? A. Yes, sir.

Q. And you said the name of the place was Mannesse, I think; is that correct? A. The owner's name was Mannesse.

Q. Yes, the owner's name. A. Yes, sir.

Q. How many times had you been to that farm before? A. Never.

Q. How many times had you been to that farm after that, if at all? A. Two or three times after.

7722

Q. And covering what period of time were the two or three other times? When were the two other times? A. After I was in police custody.

Q. Oh, you mean you went to this farm accompanied by some police officers since you were arrested? A. Yes, sir.

By the Court:

Q. City police or State police? A. City police and State police.

By Mr. Rosenthal:

Q. So that the only time that you ever were at this farm in your life—

The Court: Pardon me.

By the Court:

Q. No revenue men? A. No, sir.

Q. You know there have been a lot of raids in that immediate section?

7724

Mr. Rosenthal: I object to your Honor's question. Exception.

The Court: Withdrawn. The Court apologizes for its remark. Any motion for a mistrial? Any motion for a mistrial?

Mr. Rosenthal: I am leaving that to your Honor. Your Honor has done that for me twice, so I feel there is no necessity for me to make one.

The Court: Go ahead.

7725

7726

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By Mr. Rosenthal:

Q. With the exception of the time in 1936 that you say you were at Mannesse's farm, tomato farm, you never were there, either before or after, excepting after you were arrested in 1940, when you were taken there by a couple of police officers or State troopers; is that correct?

A. Yes, sir.

7727

Q. You testified in this trial that you hung around the corner of Saratoga and Livonia Avenue. That was one of your hangouts. Did you say that? A. Yes, sir.

Q. Was that true up to the time you were arrested, that this was one of your hangouts? A. Yes, sir.

Q. You were asked by Mr. Turkus about having been arrested for vagrancy when Judge O'Dwyer took office, in the month of February, 1940. Do you remember being asked about that?

A. Yes, sir.

7728

Q. At that time a number of police officers took the stand against you to testify, isn't that right, as to your whereabouts? A. Yes, sir.

Q. Over a period of months? A. Yes, sir.

Q. And you were present in court when these various police officers testified under oath, some six or eight in number, weren't you? A. Yes, sir.

Q. And did these police officers testify under oath to you whereabouts morning, noon, and night for a period of six months?

Mr. Turkus: I object to it. How does this impeach his credibility?

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7729

The Court: Sustained.

Mr. Rosenthal: Exception.

Q. Isn't it a fact that your regular hangout, morning, noon, and night, was at Buffalo Avenue and St. Johns Place?

Mr. Turkus: I object to it. That may be a regular hangout, but that—

Mr. Rosenthal: I object to him interjecting, when he makes an objection, something which will be taken as an answer by the witness, whether it is intentional or not. I object to any argument when he makes his objection.

7730

Mr. Turkus: The District Attorney has no exception to rulings—

Mr. Rosenthal: I object to that statement. We have heard that since the beginning of the trial also.

Mr. Turkus: I wish Mr. Rosenthal would permit me to address the Court without becoming unduly perturbed about it.

7731

Mr. Rosenthal: I am not becoming perturbed at all.

Mr. Turkus: Please, sir, I know how to conduct myself in a trial, and I will with all propriety. I merely mention the fact that since the District Attorney has no exception, he has a right to urge a point of explanation.

The Court: You do not have to. Sustained.

7732

Seymour Magoon—For People—Cross

Mr. Rosenthal: I respectfully except to the Court's ruling.

The Court: Unless you want to show that he hung out there exclusively.

Mr. Turkus: That is different.

The Court: To the elimination of Saratoga and Livonia, but when you say "regular," that means nothing. That is the reason the Court sustained the objection.

7733

Mr. Rosenthal: There is only one way I can prove—

The Court: It is all the same general locality.

Mr. Rosenthal: I except to your Honor's observation.

The Court: Nobody is glued to one corner.

Mr. Rosenthal: In view of the fact that is the ground of your Honor sustaining the objection, I will put the question in another form:

7734

By Mr. Rosenthal:

Q. Is it a fact that your business for the last five years was conducted from the corner of Buffalo Avenue and St. Johns Place?

Mr. Turkus: That has been answered. I object.

Mr. Rosenthal: That has not been answered.

The Court: Yes or no.

A. Yes, sir.

Q. Isn't it a fact that you would, when you got up in the morning, go right to Buffalo Avenue and St. Johns Place? A. Not at all times.

Q. Did you go there every day in the morning? A. No, sir.

Q. Did you go there practically every day in the morning? A. No, sir.

Q. Are you sure of that? A. Yes, sir.

Q. Well, for the six months including 1939 and up to the time you were arrested for vagrancy—Let me withdraw that.

Q. Did you go there every night? A. I can explain that for you, Counsellor.

Q. No, please, we are getting along very nicely. You answer questions and I will make them. If you do not understand me, I will repeat them. A. Excuse me.

Q. Is that clear? Now then, did you go there every night?

Mr. Turkus: I object to it.

Q. And hang around.

Mr. Turkus: That does not go to the point of exclusion of other contacts at other places. The witness has asked to make a statement.

The Court: He can say if he went there every night, even though it does not prove exclusion.

Q. Did you, yes or no? A. Practically every night.

7738

Seymour Magoon—For People—Cross

By the Court:

Q. Were you kept so busy at that corner that you did not go to Saratoga and Livonia? A. I had a working man there, your Honor. He was there all the time. I had a car.

Q. He was where? A. On St. Johns Place and Buffalo Avenue. Then I was not held to any particular place.

Q. You had your car and went around? A. That is right, sir.

7739

By Mr. Rosenthal:

Q. Were you asked these questions in the Goldstein Strauss trial in respect to St. Johns Place, and did you make these answers: (on page 469, folio 1407)

"Q. Do you know where you were at half past nine that night? A. Well, the only place possible is on St. Johns Place and Buffalo Avenue.

"Q. And you say that because it was your custom to ride around there, is that right? A. I hung out there.

7740

"Q. You hung out there every night? A. Yes, sir.

"Q. At half past nine? A. All day and all night, or all morning, any time I got up out of the house.

"Q. Any time that you were not with anybody you were at that corner, is that right? A. Yes, sir."

Question, at page 473 of the same printed record—first, before I read that, were you asked those questions and did you give those answers? A. If it is there, Counsellor.

Q. If it is in the book, you made that statement; is that right? A. Yes, sir.

Q. Now, it is in the book. Did you make the statement? A. Yes, sir.

Q. Now then, in the book, at page 473, were you asked these questions:

"Q. You told me that you were at Buffalo and St. Johns Place on Sunday night. A. I did not specify any day

"Q. About half past four. A. I did not specify any day.

"Q. What? A. I did not specify any day.

"Q. You might have been there? That was your usual hangout? A. St. Johns and Buffalo.

"Q. Sundays, holidays, and everything else? A. Yes, sir.

"Q. Is that correct? A. Yes, sir."

Were you asked those questions and did you give those answers? A. If it is there, it is so.

Q. Well, it is in the book.

Mr. Turkus: Then the answer is yes.

Q. Did you say that? A. Yes, sir.

Q. Is the defendant Capone married, do you know? A. Will you please repeat that?

Q. Is the defendant Capone married? A. Yes, sir.

Q. Has he any family? A. Yes, sir.

Q. What does his family consist of? A. A wife and children.

Q. How many children?

The Court: What has that got to do with the case?

Mr. Rosenthal: On the point of the

7744

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credibility of this man, which will come out in a little while in my questioning.

The Court: As to the number of children another man had?

Mr. Rosenthal: As to how old they are and what they are.

Mr. Turkus: He did not pretend any friendship with the children.

The Court: Is there an objection?

Mr. Turkus: Yes.

7745

The Court: Sustained.

Mr. Rosenthal: I respectfully except.

Q. You say you were at Capone's house once, is that right? A. Pardon?

Q. You said you were at Capone's house once? A. Not once, but a number of times.

Q. And you said it was on Avenue K? A. I said I think it is on Avenue K.

Q. Avenue K, is it between—off of Schenectady Avenue on Avenue K? A. It is a couple of blocks off Utica Avenue.

7746

Q. Well, you are acquainted with that section, aren't you? A. Not that section very well.

Q. That section is how far from Saratoga and Livonia to this Avenue K section that you are talking about? A. Driving a car or walking?

The Court: How many blocks?

Q. How far in blocks, in mileage? A. Oh, I would say a couple of miles.

Q. And you are acquainted with Schenectady Avenue, aren't you? A. One end of Schenectady Avenue.

Q. Do you know where 46th Street is? A. I have heard the street.

Q. Well, is it between 46th Street and Schenectady Avenue on Avenue K that Capone lives? A. I know the house; I don't know the street.

Q. You know the house but you do not know the street, is that it? A. Yes, sir.

Q. Well, do you know between what streets is it? A. I think it is around Avenue K, a couple of blocks off Utica Avenue.

Q. But you are guessing now, is that right? A. If we walk over there now, I can take you right there.

Q. Is it on the corner or is it between blocks? A. A corner house.

Q. Is the entrance on Avenue K? A. Two entrances.

Q. One on Avenue K and one on the other avenue, is that it? A. I am not saying on what street. There was one front entrance and a back entrance.

Q. You are sure of this, aren't you? A. Yes, sir.

Q. And this was in—I am talking about 1939; is that what you are talking about, talking about where he lived in 1939, is when you testified? Is that what you are talking about? A. Almost sure of that.

Q. Is that your best answer, you are almost sure? A. If you—

Q. Just please— A. If you give me that question clear in one question at a time, counsellor, I can answer better.

Q. Am I not asking you one question at a

7750

Seymour Magoon--For People--Cross

time? I withdraw it. We will give it to you, half a question, if you want it, at a time.

Mr. Turkus: I object to it. The witness wanted one question at a time.

Mr. Rosenthal: We will give it to him.

7751

Q. Do you remember on your direct examination talking about telling Mr. Turkus about a conversation that you were supposed to have had in Capone's house? Remember telling him? A. Yes, sir.

Q. Is that where he lived at the time that you had this conversation, the place where you have just described? A. Yes, sir.

Q. Is that where he lived? A. Yes, sir.

Q. In the fall of 1928 you said you saw, on direct examination, Weiss, Capone and others on a certain corner?

7752

Mr. Turkus: I object to that. There is no such testimony in the record. You are ten years out of the way.

Mr. Rosenthal: We will see whether you are.

Mr. Turkus: You said in the fall of '28.

Mr. Rosenthal: '38 was what was intended.

Q. Where was it you said you saw these people? A. Will you please repeat that question?

Q. In 1938, where did you say you saw these people, in the fall of 1938?

Mr. Turkus: I object to the form of

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7753

the question. It does not show what people he is referring to.

The Court: Sustained.

Mr. Rosenthal: Already mentioned. Do you want me to repeat them in the question?

The Court: Name the people.

Q. Did you on direct examination testify about seeing Weiss, Capone, Strauss and Reles together some place in 1938? A. Yes, sir.

7754

Q. When in 1938 was it that you saw them? A. In the fall of 1938.

Q. What part of the fall of 1938? A. It was kind of cool then, counsellor.

Q. I cannot hear you. A. I say it was kind of cool then.

Q. It was kind of cool that night? A. No, in that season.

Q. Can you fix any approximate month? A. I will say about October or November.

Q. Is that your estimate or are you merely guessing? A. That is my estimate.

7755

Q. Where was it that you say you met them? A. On the corner.

Q. What corner? A. Saratoga and Livonia Avenue.

Q. Were they the only people there at the time, to your recollection; yes or no? A. There is always people there.

Q. Do you recall anybody else that was there at the time; yes or no? A. Off-hand, no.

Q. About what time of the night was it? A. Around 9:30, 10:00, around that time.

7756

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Q. Are you guessing, or is that your estimate at this time? A. That is my answer.

Q. At that time did you know Paul Berger? A. Yes, sir.

Q. How long had you known him? A. A little while prior to that time.

Q. What do you mean by a little while, a year? A. Two or three.

Q. And did Berger hang out on that corner? A. No, sir.

7757

Q. Had you met Berger on that corner prior to that time? A. I think it was on that corner that I met Berger.

Q. Well, what is your best recollection as to where you met Berger for the first time? A. I would say Brownsville.

Q. Well, is that the nearest you can recall as to where you first met Berger, in Brownsville? A. Yes, sir.

7758

Q. On direct examination did you not say that it was on the corner, the corner meaning Saratoga and Livonia, that you first met Berger? Do you know what direct examination is? A. Yes, sir.

Q. That is when Mr. Turkus asked you questions. A. Yes, sir.

Q. Didn't you then say that it was the corner that you met Berger?

Mr. Turkus: I object to it. This record speaks for itself.

Mr. Rosenthal: This is cross-examination on a question of this man's credibility and remembrance of what he even said today on the stand.

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7759

Mr. Turkus: He says this time on cross he thinks it is the corner. He is definite it was Brownsville. The jury has not forgotten the testimony. It happened a short time ago.

The Court: The record speaks for itself. Sustained.

Mr. Rosenthal: I respectfully except to the Court's ruling.

Q. What was the conversation that you had on the corner that night? A. Who?

7760

Q. With anybody, in the fall of 1938, the months October or November, the time 9:30 to 10:00 o'clock, what conversation did you have on that corner?

Mr. Turkus: I object unless he fixes the persons with whom he had the conversation.

The Court: Fix the persons. Sustained.

Mr. Rosenthal: I respectfully except.

7761

Q. With whom did you talk on that corner on that particular night? A. In reference to what, counsellor?

Q. In reference to anything, whom did you speak to on that corner at 9:30 o'clock that night, when you arrived at the corner and, as you say, you saw Weiss, Capone, Reies and Strauss?

Mr. Turkus: I object to the form of the question, anything.

The Court: It is indefinite because fall is indefinite. There may have been other

7762

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conversations. If you fix the subject matter of the conversation—

Mr. Rosenthal: I have already designated the same time as Mr. Turkus designated.

The Court: He is not required to remember the record. Even the Court has to go back on its notes to remember what was said yesterday. The human mind cannot carry a record. That is why we have the stenographer and the typewritten record. This was the conversation about Ratner's restaurant.

7763

By the Court:

Q. Can you place that? A. Yes, sir.

Mr. Rosenthal: I respectfully except to the Court's observation.

The Court: Now proceed.

Mr. Rosenthal: And to the Court's direction to the witness as to what the conversation was about.

7764

The Court: All right, the Court withdraws it, sustains the objection as indefinite. I thought that was what you wanted.

Mr. Rosenthal: I except to the sustaining of the objection.

By Mr. Rosenthal:

Q. When you arrived at the corner of Saratoga and Livonia Avenue, in the fall of 1938, and, as you say, saw Weiss, Capone, Strauss and Reles, to whom did you speak on that occasion?

Mr. Turkus: I object to the form of the question because the fall is a long period of time. That would presuppose that was the only meeting and, second, it must be directed to the attention of the witness what the subject matter is that he wishes to elicit on this question.

The Court: You see the trouble is the direct called for only information as to conversation with one but it does not include conversation as to the others.

7766

Mr. Turkus: That is right.

The Court: That is what tends to confuse. Sustained.

Mr. Rosenthal: I respectfully except to the Court's ruling.

The Court: When a person meets several in a group, it may be reasonable to suppose that it is more or less inconsequential conversation with all but we are concerned with the conversation with such as had something to do with this charge that is now being tried. You may inquire about that.

7767

Mr. Rosenthal: May I first except to the Court's observation?

The Court: But that eliminates "hello" and "goodbye".

Mr. Rosenthal: May I proceed, sir?

The Court: Yes.

By Mr. Rosenthal:

Q. Did you at that time speak to Weiss, according to you, about going some place? A. Yes, sir.

7768

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Q. What did you say Weiss said to you or you said to Weiss on that occasion? A. He says—

Mr. Barshay: Will your Honor give me a general objection to this line of inquiry on the ground it is not binding on the defendant Buchalter?

The Court: Yes.

7769

A. He says, "Go to Ratner's restaurant tomorrow morning and you will meet Paul Berger and some other fellow and he will point out Max Rubin to you. Tail him, find out his habits and so forth."

Q. What is the "and so forth"? Tell us the whole conversation. Anything else said? A. Who he walks with, who he comes out of the house, who he walks into the house, and all things like that, on following a man in order to have him killed.

Q. He told you that? A. That was next day, counselor.

7770

Mr. Rosenthal: I ask that be stricken if it was next day.

The Court: Strike it out.

Q. I am asking you now did he tell you that; yes or no? In that first conversation did he tell you that? A. No, sir.

Mr. Rosenthal: Then I ask that his observation be stricken out.

Mr. Turkus: It was stricken out.

Mr. Rosenthal: No, the other thing is stricken. Now I am asking that the

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7771

observation be stricken of this man and the jury instructed to disregard it.

The Court: The Court has ruled on that.

Mr. Rosenthal: The Court ruled on the other but I ask his original answer be stricken.

The Court: The stenographer will read back.

(The Court's remark "Strike it out" was read.)

7772

Mr. Rosenthal: That is only directed to the question I was asking but he had already answered prior.

The Court: The Court knows what it was. It is perfectly plain.

Q. Was anything else said that night in that conversation? This is the first conversation in respect to going over to Ratner's restaurant. Have you told us all you recall of that conversation? A. Yes, sir.

Q. Isn't it a fact you were not told at that time the purpose of your tailing Rubin, on the first conversation? A. Will you repeat that question, please?

7773

Q. Isn't it a fact that on this first occasion you were not told anything about the purpose of tailing Rubin?

The Court: He has just told you the purpose of tailing him but not the eventuality.

Mr. Talley: He volunteered that, if your Honor pleases.

7774

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The Court: Not the reason for the instruction. He said that was understood and then the Court struck that out on your motion.

Mr. Rosenthal: I except to the Court's observation.

7775

The Court: Counsel, under purpose of tailing comes the instructions as to the particulars that were to be observed, to keep track of his movements, see whom he went in and out with, whether he was under bodyguard, and so on, where he went, the time and all that. All those are elements, but as to the reason behind all this, we have nothing, in so far as this answer is concerned.

Mr. Rosenthal: I merely except to the Court's observation as to the meaning of answers as being an invasion of the province of this jury.

7776

The Court: You mean when the Judge has to rule on an objection the Judge has to submit his brains to the jury and let the jury tell him how to rule before he passes on it? That is ridiculous. Don't try anything like that. That is a cheap speech to this jury. Now proceed. You are just trying to turn the jury against the Court's rulings, hook somebody up on prejudice against the Court. Don't try it. It is too cheap. Now proceed.

Mr. Rosenthal: Before I proceed, as a representative member of the Bar, I except to the Court's statement as to what the intention of counsel is. I have a per-

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7777

feet right to stand here and object to anything in the interest of my client.

The Court: Yes, and the Court will see to it, too. Now proceed.

Mr. Rosenthal: I except to your Honor's observation.

By Mr. Rosenthal:

Q. After this conversation, what is the next thing you did? A. I went away.

7778

Q. Did you go to Ratner's? A. Yes, sir.

Q. When did you go to Ratner's? A. The following morning.

Q. At what time? A. About 9:30, 10, in the morning.

Q. When you arrived at Ratner's, did you see Berger? A. Yes, sir.

Q. Had you known the man that was with Berger before then? A. No, sir.

Q. How long did you remain in the restaurant? A. A little while.

Q. What do you call a little while? A. Half hour, three-quarters of an hour, forty minutes.

7779

Q. After the meal was over, what happened? A. We went out.

Q. Where did you go to? A. I went to my car. Paul Berger and the other fellow went to their car.

Q. Where was your car parked? A. In the vicinity.

Q. Approximately where? A. Off Delancey Street.

Q. Off Delancey Street? A. Yes, sir, on the side street.

7780

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Q. Where was this restaurant? A. On Delancey Street.

Q. Weren't the cars parked up at Union Square? A. Yes, sir.

Q. I thought you just said they were parked on Delancey Street?

Mr. Turkus: He did, but that is not inconsistent. You are talking about two different times.

7781

Mr. Rosenthal: I object to the District Attorney saying it is or is not inconsistent.

Mr. Turkus: That is an objection.

Mr. Rosenthal: That is an observation only, not an objection.

Mr. Turkus: Do you want to quarrel with me?

Mr. Rosenthal: No, I don't want to quarrel with you, or anybody else, but I will not be stepped on.

By the Court:

7782

Q. Counsel does not mean after you left Ratner's, he means while you were in Ratner's, do you recall where you parked your car then?

A. I said up Delancey.

Q. Before you went to Ratner's? A. I parked off Delancey and then I went into Ratner's.

Q. After you left Ratner's, where did you go? A. With the other fellows. With the other two fellows?

Q. Yes. A. Parked the car on Union Square.

Q. Two different parkings? A. Yes, sir.

By Mr. Rosenthal:

Q. Did the both of you have your cars parked at the same place when you went into Ratner's?

A. I don't know.

Q. You came out of Ratner's together? A. Yes, sir.

Q. You went to your car? A. Yes.

Q. Didn't they go in their car? A. Yes, sir, to Paul Berger's car.

Q. Where was it parked? A. Up ahead of my car. 7784

Q. And then you both drove in separate cars, you following? A. Yes, sir.

Q. Who was in your car, anybody other than yourself? A. No, sir.

Q. How far did you drive? A. Over to Union Square.

Q. Then you both parked your cars again on the street? A. Yes, sir.

Q. Then started walking? A. Yes, sir.

Q. Where did you walk to? A. Fifth Avenue and 17th Street—17th Street and Fifth Avenue. 7785

Q. Was Berger walking with you? A. No, sir.

Q. Berger was ahead and Cuppie following? A. Yes, sir.

Q. Then Berger spoke to you in a whisper? A. Yes, sir.

Q. After Berger spoke to you, did you do something? A. Yes, sir.

Q. What did you do? A. Followed Rubin.

Q. Were you alone when you followed him? A. No, sir.

Q. Who was with you? A. Cuppie.

7786

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Q. Where did you follow him to? A. All around.

Q. Did he go in any buildings or in any places?
A. Yes, sir.

Q. Did you go in the buildings with him? A. No, sir.

Q. Did you wait out in front of the buildings?
A. Yes, sir.

Q. The buildings had more than one entrance?
A. I presume so.

7787

Q. He always came out the same entrance?
A. Yes, sir.

Q. And you were waiting there sometimes an hour or an hour and a half in front of the buildings after he would enter it? A. No, sir.

Q. For a period of time you would wait? A. Not very long.

Q. As long as it took him to go in and transact whatever business he was doing? A. Yes, sir.

7788

Q. Where did he go and at what time— Question withdrawn. At what time did you finally leave him that night? A. I left him about 4:30.

Q. Where was he when you left him? A. 14th Street and 7th Avenue.

Q. Then where did you go? A. Back to Brooklyn.

Q. When after this did you next see any of the defendants and where did you see them? A. That night.

Q. Where did you see them? A. On the corner.

Q. That would be in the month of October or November, 1938? A. In the fall, yes, sir.

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7789

Q. Now, you fixed it as your approximation of time, October or November, is that right?

Mr. Turkus: I object. The witness said in the fall.

Mr. Rosenthal: I am asking him to fix it, if possible.

Mr. Turkus: That was not the purport of that question.

The Court: He says in the fall—whether it was then cold, if counsel can recall that fall—that was the fall that the hurricane was in, in September. What the condition was in the early part of November, maybe you can recall yourself.

7790

Mr. Rosenthal: It was thirty degrees this summer also in some places, but that does not necessarily mean the time I mean.

The Court: He said in the fall. Don't argue.

Q. Didn't you tell me you fixed the time approximately in October or November of this conversation?

7791

Mr. Turkus: I object.

Q. (The Court) Do you remember the month?
A. No, sir.

Q. Did you a few minutes ago say to me that to the best of your estimation it was either the month of October or November, did you say that?

Mr. Turkus: I object. That is an objectionable question.

7792

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The Court: That is not recollection; that is only conjecture. Objection sustained.

Mr. Rosenthal: Exception.

Q. Well, can you more definitely fix at this time what you mean by the fall of the year 1938?
A. It was cold weather then.

7793

Q. Other than being cold weather, can you more definitely fix at this time the month of the year, to the best of your recollection? A. I say, approximately, either October or November.

Q. Now, on that night you say you had another talk with the defendant Weiss? A. Yes, sir.

Q. And after that talk you went some place to follow him there? A. Yes, sir.

Q. You went up to Rubin's house to watch?
A. Yes, sir.

Q. And you stood there until about what time?
A. Until the evening.

7794

Q. Approximately what time? A. 4:30—5:00 o'clock.

Q. Then you say Rubin returned? A. Yes, sir.

Q. Then that night you went there? A. To a saloon on Grand and Lewis Streets.

Q. You are sure it is Lewis Street? A. No, sir.

Q. You only think it is? A. Yes, sir, that is right.

Q. At that time would you say you saw just the defendant Weiss and had a consultation? A. Yes, sir.

Q. That is correct? A. Yes, sir.

Q. Now, isn't it your testimony that at that

time Weiss said to you, according to you, "Go back to Brooklyn and see Harry Strauss and he will give you further instructions"? Is that what you testified to on direct that he said?

A. Yes, sir.

Q. Now, then, you say you went to Brooklyn?

A. Yes, sir.

Q. What time was it that you got to Brooklyn, what time of night? A. After nine.

Q. Can you fix it any more definitely than after nine, how much after nine? A. Roughly, I say between nine and ten.

7796

Q. At that time you say you saw the defendant Capone, Strauss and Reles on the corner, is that right? A. Correct.

Q. You talked to Strauss— Question withdrawn.

Q. Didn't you direct your conversation to Strauss at that time? A. It was a free-for-all conversation.

Q. Didn't you say on your direct examination that Strauss said, "What happened up there?"

A. Yes, sir.

7797

Q. Is that what happened when you got there? Did Strauss say that? A. Yes, sir.

Q. Didn't you say that after Strauss asked you, "What happened up there?", you explained to him? Wasn't that your testimony on direct examination? A. Yes, sir.

Q. And after you had explained to him, Strauss then said something to you, is that correct? A. Yes, sir.

Q. What did Strauss say to you after you had explained to him what you had done that day;

7798

Seymour Magoon—For People—Cross

what did Strauss say? A. He said, "Go back there again tomorrow."

Q. Is that all he said? A. No, sir.

Q. I am asking you what did Strauss say in that conversation to you after you had told him what had happened. A. "Go back there tomorrow morning and watch Rubin, tail him, who is he with, how he walks, how he goes over to the subway, how he gets off the subway, and on what side of the street he walks, and so forth."

7799

Q. Did you say anything after Strauss said that to you, to Strauss, did you say, "All right, I will"? A. Well, it is understood that it is all right.

Mr. Rosenthal: I ask that the answer be stricken out, "It is understood," as not responsive.

Q. (The Court) Do you recall whether you said anything or not?

7800

Mr. Rosenthal: I move to strike out the last answer as not responsive.

The Court: Strike it out.

A. I must have shook my head.

Q. (The Court) Do you have any recollection one way or the other? A. Off-hand, no, your Honor.

Q. How long were you there all told at that particular meeting? A. A little while.

Q. What does that mean, a few minutes? A. A half an hour or so.

Q. Well, did you leave immediately after Strauss had told you to go up and watch his

Seymour Magoon—For People—Cross

7801

habits, et cetera, as you related? A. After a half an hour or so, yes, sir.

Q. You stood around after he had finished his conversation with you? A. We were speaking for about a half an hour or so and then I left.

Q. Now, did anybody else speak except Strauss? A. Yes, sir.

Q. Who else spoke? A. Capone spoke.

Q. When did he speak? A. In that conversation there.

Q. After the conversation—

7802

Mr. Turkus: I object. He has already testified—

Mr. Rosenthal: Now I except—

Mr. Turkus: You except to what?

Mr. Rosenthal: He is starting in again with an explanation of what he is said to have said, so that when I ask the question the witness will know.

Mr. Turkus: I object to this question as already answered.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

7803

Q. Didn't you testify on your direct examination that after the conversation was all over and when you were going away, that then Capone said something? Did you say that in words or substance in your conversation?

Mr. Turkus: I object. That is not the testimony. I refer your Honor to page 2346 of the record.

The Court: I remember it. Objection sustained.

7804

Seymour Magoon—For People—Cross

Mr. Rosenthal: I respectfully except to the Court's ruling.

Q. Now, you were directed, according to you, by Weiss to get instructions from Strauss, weren't you?

Mr. Turkus: Objected to as already answered.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

7805

Q. Was anything, other than what you testified to on your direct examination, said by Capone at any time during that conversation; yes or no?

Mr. Turkus: I object to the form of the question. He has not brought out what Capone said.

Mr. Rosenthal: Other than what he testified to on direct examination.

Mr. Turkus: Why omit it? I object.

7806

The Court: That implies he has got to remember what he said yesterday on direct, and if your memory is so good why do you have to have a daily copy of the minutes?

Mr. Rosenthal: I except to that remark. I except to the Court's observation. If the Court desires me to answer, I will answer that very clearly.

The Court: The objection is sustained.

Mr. Rosenthal: I respectfully except. With the Court's observation, I have no farther questions. At this time I move

Seymour Magoon—For People—Redirect

7807

for the withdrawal of a juror and the declaration of a mistrial.

The Court: On what ground?

Mr. Rosenthal: Upon the ground that the action of the Court toward defense counsel and upon the observations of this Court throughout this trial as to the testimony of various witnesses and what the import of their testimony is throughout the trial, being an invasion of the jury's province.

7808

The Court: Gentlemen of the jury, disregard that. These are just tactics trying to set the jury against the Court, thereby lessening the authority of the Court with the jury—giving the Court instructions.

Mr. Rosenthal: I except to that observation.

The Court: The motion is denied.

Defense Counsel: All except.

Re-direct examination by Mr. Turkus:

7809

Q. Both counsel for Capone and Weiss asked you about a fight you had with a policeman, do you remember that? A. Yes, sir.

Q. At the time you had the fight with the policeman, was the police officer in uniform? A. No, sir.

The Court: Why palliate it?

Mr. Turkus: I don't have to palliate it, but I don't want something that is improper on the record.

The Court: Do you draw a distinction

7810

Seymour Magoon—For People—Redirect

as to whether the policeman is in uniform or not?

Mr. Turkus: Will your Honor permit me to ask the question? I am not trying to put this man in any light other than what he is. There is just one point I wish to straighten out.

Q. Was it in a gambling joint where this happened? A. Yes, sir.

7811

Q. Was the cop there as a patron at the time?

Mr. Rosenthal: I object to his trying the case on a collateral issue.

The Court: Objection sustained.

Mr. Turkus: Well, forget that.

Q. Now, will you come down to the social contact you had—Mr. Rosenthal, counsel for the defendant said—

7812

Mr. Rosenthal: I object to the observation of "We will come down to," and, "What Mr. Rosenthal did," as not a proper part of a question.

Mr. Turkus: I have not finished the question.

Q. He asked you about the social contact you had with Buggsy Goldstein, Pittsburg Phil Strauss and Reles; do you recall that? A. Yes, sir.

Q. He also asked you whether or not you knew that Capone was married; do you remember that? A. Yes, sir.

Seymour Magoon—For People—Redirect · 7813

Q. Did you have any social contact with Capone?

Mr. Rosenthal: I objected and the Court sustained the objection at the time I tried to get that in. I object to it as not proper re-direct.

The Court: Objection overruled.

Mr. Rosenthal: Exception.

Q. What were some of the social contacts you had with Capone? 7814

Mr. Rosenthal: I object.

The Court: Objection overruled.

Mr. Rosenthal: Exception.

A. I was at his wedding.

Q. Did you ever go to any party at his home?

A. Yes, sir.

Mr. Rosenthal: I object to that as leading and suggestive.

The Court: Objection sustained. 7815

Q. Besides attending his wedding did you have any other social contacts with Capone?

Mr. Rosenthal: Objected to.

The Court: Objection sustained.

Q. Will you relate all the social contacts with Capone that you can recall?

Mr. Rosenthal: I object.

The Court: No, that is quite apart from the case.

7816

Seymour Magoon—For People—Redirect

Mr. Turkus: I take it your Honor has precluded me from going any further on that subject.

The Court: You have opened a field that has nothing to do with the issue.

Q. There is one final question. I do not wish to embarrass you, but do you have an impediment in your speech? A. Yes, sir.

7817

Mr. Barshay: I move to strike out this man's testimony on the ground it is not binding on the defendant Buchalter; on the further ground that any act this man did subsequent to the commission of this crime on September 11, 1936, is binding only upon himself and not upon the defendant Buchalter. And I move to strike out anything he said, together with others, after that date, on the ground it is not binding on Buchalter.

The Court: Denied at this time for the reason heretofore stated on similar motions.

7818

Mr. Barshay: Exception.

Mr. Turkus: I cannot possibly conclude the People's case today.

The Court: You can go ahead until closing hour.

Mr. Turkus: I would just as soon take a recess now, I am tired.

The Court: I read five hundred pages of the record last night and I have spent from two to two and a half hours in addition in conference, together with my court work.

Albert E. Aman—For People—Direct

7819

Mr. Barshay: I do not want to draw any parallel between the work of the Court and the District Attorney.

The Court: The Court is willing to work.

Mr. Turkus: We have fifteen minutes left, all right.

ALBERT E. AMAN, residing at 2171 Eastwood Avenue, Chicago, Illinois, called as a witness on behalf of the People, after being duly sworn, testified as follows:

7820

Mr. Rosenthal: Before the testimony, so I will not have to interrupt, I am objecting as far as the defendant Capone is concerned, if it so develops, on the ground it is not binding upon him.

The Court: I haven't the least idea what it is about.

Mr. Rosenthal: I do not want to get up and object, if your Honor will permit me to reserve my objections to the close of the testimony.

7821

The Court: That is the best time to make it.

Mr. Rosenthal: Then I might be accused of being dilatory, so I am making this motion.

Direct examination by Mr. Turkus: 1

Q. Did you state your residence as being in Chicago, Illinois? A. I did.

7822

Albert E. Aman—For People—Direct

Q. Are you employed by the United States Government? A. I am.

Q. How many years have you been in the employ of the United States Government? A. In all, about eleven and a half years.

Q. In your eleven and a-half years of employment with the United States Government, have you been attached to specific bureaus or agencies? A. I have.

7823

Q. Has that been two in number? A. Yes, sir.

Q. Now, on April 6, 1941, in what city in the United States were you? A. Kansas City, Missouri.

Q. On April 6, 1941, did you see any defendant you now see in the court room? A. I did.

Q. Which one? A. The second man in the first row.

Mr. Turkus: Indicating the defendant Weiss?

The Witness: That is right.

7824

By the Court:

Q. Are you on the F.B.I.? A. No, sir, United States Bureau of Narcotics.

Mr. Turkus: May we take a recess now, your Honor?

Mr. Talley: I object to a recess being taken at this time. Let us have the evidence of this witness.

The Court: Go ahead with the case.

Albert E. Aman—For People—Direct

7825

By Mr. Turkus:

Q. Where did you find the defendant Weiss?

Mr. Barshay: With respect to Buchalter, may I have one objection so I will not interrupt, as the testimony not being binding upon him.

The Court: Overruled.

Mr. Barshay: Exception.

7826

A. In an automobile.

Q. Where did you find him in an automobile, can you give the specific location?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. In front of a street address, 3752 Highland Street, Kansas City, Missouri.

Q. Now, at the time you found him in this automobile, who was he with? A. He was with his wife and another lady.

7827

Q. What was the name of the other lady? A. Fay Dilly (name spelled by Mr. Turkus).

Q. Did you, when Weiss was in the automobile, ask him his name? A. I did not.

Mr. Barshay: Is it understood I have a general objection to this line of inquiry?

The Court: Yes.

Q. Did you and Weiss go to the office in Kansas City? A. We did.

7828

Albert E. Aman—For People—Direct

Q. In the office did you ask Weiss what his name was?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant. He said it was Weiss, he identified him.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I did not ask him his name.

7829

Q. Was his name asked of him by someone in your presence? A. It was.

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

Q. Who asked the defendant Weiss what his name was? A. Joseph Bell.

Q. Now, when Mr. Bell asked the defendant Mendy Weiss for his name, what did Mendy Weiss say his name was?

7830

Mr. Talley: The same objection.

The Court: Objection overruled.

Mr. Talley: Exception.

A. James W. Bell.

Q. Is the Mr. Bell, who asked Mr. Mendy Weiss, for his name the district supervisor, Joseph Bell? A. Yes, sir.

Q. Now, in the office, Mr. Aman, did you inspect any of the belongings of the person of the defendant Mendy Weiss? A. I did.

Q. What did you take from his person?

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7831

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Has this anything to do with the case?

Mr. Talley: Nothing whatever to do with this case.

Mr. Turkus: This is on the point of flight.

The Court: You mean having something on his person having a bearing on the question of flight?

7832

Mr. Turkus: Yes. Flight, disguise in identity, which is highly important.

The Court: Objection overruled.

Mr. Talley: I object to the statement of the District Attorney and I take an exception to it.

Mr. Turkus: The Judge asked me a question and I must give my answer, and then counsel for the defense takes objection to it.

Mr. Talley: Yes, I object, and I move for the withdrawal of a juror and a declaration of a mistrial because of the improper statement made by the District Attorney.

7833

The Court: Motion denied.

Mr. Talley: Exception.

A. I took all the papers and personal effects he had in his pocket.

Q. Did all those effects he had in his pocket, on his person, included papers and money? A. Yes, sir.

Q. Can you at this time remember approxi-

7834

Albert E. Aman—For People—Direct

mately the amount of money he had in his pocket?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. About \$134 in currency.

7835

Q. When you removed the papers and the currency from the pocket of the person of this defendant, Mendy Weiss, did you initial each and every one of them, those documents and papers you found? A. All, but the currency.

Q. Have you with you, with the exception of the currency, all of the papers and purported documents you found on the person of the defendant Mendy Weiss? A. I have.

Mr. Turkus: Will you hand me Item E?

The Witness: May I ask the Court a question, please?

7836

The Court: Yes.

The Witness: The papers that I have with me, I might have to use in litigation.

Mr. Turkus: I think I understand what the witness has in mind.

The Court: You want to take them back, you don't want to leave them here? You don't have to leave them here.

Q. Have you photostats of them? A. Yes, sir.

Q. You can produce the originals in court? A. Yes, sir.

Q. They can be exhibited to the Court and

Albert E. Aman—For People—Direct

7837

the jury and you can leave the photostats in their place? A. Yes, sir.

Mr. Turkus: That will be the procedure I will adopt, with the Court's permission.

The Court: All right.

Mr. Turkus: May I have the original Item E?

(Paper handed to District Attorney by witness.)

Mr. Turkus: Since this is an original, I will not mark it, but I hand you a card and ask you if that is one of the items you found on the person of the defendant Mendy Weiss.

7838

Mr. Talley: It calls for a yes or no answer.

The Witness: Yes.

Q. Did you question Mendy Weiss in reference to that card?

Mr. Talley: I object. I might as well state my objection further.

7839

The Court: Yes.

Mr. Talley: The offer in evidence of these papers is suggested by the District Attorney. I object to their introduction or to the introduction of any papers, or to the giving of any testimony with respect to them, upon the ground that this was an illegal seizure and search of this witness, of the defendant Weiss, and that it nowhere appears as yet that this witness had any authority to make that search that resulted in the taking of these papers.

7840

*Albert E. Aman—For People—Cross
(Preliminary)*

The Court: You mean it was an illegal arrest?

Mr. Talley: And on the further ground it is incompetent, immaterial and irrelevant.

The Court: You mean it was an unlawful arrest?

7841

Mr. Talley: I say it was an unlawful search, and I do not know upon what authority the arrest, if it was an arrest, was made. May I examine preliminarily this witness?

The Court: You may.

By Mr. Talley:

Q. Did you have a search warrant when you searched and removed from the defendant Weiss the papers you speak of? A. I did not.

Mr. Talley: I press my objection.

7842

Mr. Turkus: That does not go far enough.

The Court: It does not go far enough because if the arrest was a legal one the search was entirely incident to the arrest.

Mr. Talley: I will proceed further, then.

By Mr. Talley:

Q. Did you have a warrant for the arrest of Emanuel Weiss? A. I did not.

Mr. Talley: That seems to end that situation, if your Honor please.

The Court: The trouble is I don't know just what the Federal statute is in relation to arrest without warrant.

Mr. Talley: You know what the Federal statute is which prohibits any illegal search or seizure of anybody, and that would include this defendant.

The Court: That sounds more like an argument to the jury than an argument to the Judge. I know what the statute is in this State. There could be an arrest without a warrant if a felony had been committed, if the defendant had committed it. There could also be an arrest without a warrant, if I recall correctly, if there was reasonable ground to believe a felony had been committed by a person.

7844

Mr. Talley: This is not a police officer. This is an officer of a bureau, a bureau of investigation, a bureau of Federal investigation.

The Court: That makes no difference.

Mr. Talley: Without a warrant he had no authority to make an arrest or a seizure.

7845

The Court: You mean he has no authority to make arrests?

Mr. Talley: Without a warrant, he had no authority to make either an arrest or the seizure of papers.

The Court: You had better develop that, Mr. Turkus.

Mr. Turkus: Under authority, what is the difference how the District Attorney gets this, in the State of New York it is admissible, but I steered away from ar-

7846

Colloquy

rest because I did not want anything mentioned here about me introducing possibly some other matter that would be the cause for another motion for a mistrial.

Mr. Talley: I object to that statement as highly prejudicial.

7847

The Court: Years ago there used to be arrests by public officers in places of business and the seizure of books and papers. Books and papers thus seized were used as a basis for investigation of the fraudulent use of the mails. A lot of people went to Atlanta upon conviction. But finally the Federal Court held— I don't know whether it went to the highest court, but it certainly went to the Circuit Court of Appeals—that papers so seized without a search warrant and without reasonable grounds for arrest—without legal grounds to make an arrest, to which the searching of a person might be incidental—must be suppressed upon trial as an illegal act—I will let you think it over until Monday morning because the legal point I will have to look into.

7848

(At this point a recess was taken. The jury was admonished in the following language:)

The Court: Please do not discuss the case nor let anybody talk to you about it. Keep your minds open. Remember all the other admonitions and follow them. The defendants are remanded.

(Adjournment taken to November 17, 1941, at 10:00 A. M.)

Brooklyn, N. Y., November 17, 1941.

TRIAL RESUMED

Mr. Turkus: On Saturday, at time of recess, there was a law point raised by Judge Talley.

The Court: Have the authorities been run down?

Mr. Talley: I have not checked the authorities since the Defour case; I know of no change since that.

7850

The Court: Have counsel for the defendants run down authorities since the Defour case?

Mr. Talley: There are none.

The Court: I checked up on the statute. There appear to be none. In the Defour case it seems to be clear that the basis of the decision and the ground of distinction between the Defour and the Weeks case is that the State Court procedure does not come under any provisions of the Federal Constitution. The point I was conjecturing about on Saturday, which had relation to this witness being a Federal agent, and that possibly bringing his conduct, even in State Court procedure, under the authority of the Weeks case, seems to be lacking in value. Apparently, this evidence, if competent, may be taken regardless of the conditions under which the seizure was made, and the objection is overruled on that ground.

7851

7852

Albert E. Aman—For People—Direct

but I must see the paper that was offered in evidence to judge as to competency.

Mr. Turkus: I don't think we got to the point of offer. Judge Talley raised his objection when I asked this question.

The Court: I thought you offered the card.

Mr. Turkus: It was just preliminary to the offer.

7853

Mr. Talley: Let me note an exception to your Honor's ruling before you go any further. I note my exception, and I object on the further ground that the testimony is incompetent.

The Court: I will look at the paper after it is offered.

Mr. Turkus: Agent Aman has the original paper.

7854

ALBERT E. AMAN, a witness in behalf of the People, resumed the stand and testified further as follows:

Direct examination by Mr. Turkus (continued):

Q. The question was, did you question Mendy Weiss in reference to the card? I am waiting for a yes or no answer to that. That is in reference to Item E.

Mr. Talley: That is objected to. That question is incompetent, immaterial and irrelevant.

The Court: Objection overruled.

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7855

Mr. Talley: Exception.

The Court: Has that exhibit been marked for identification?

Mr. Turkus: No, your Honor. There is a question now pending which has not been answered.

(Pending question read to the witness.)

A. Yes, sir.

Q. What did you ask Mendy Weiss in reference to that card?

7856

Mr. Barshay: Will your Honor give me the same objection I have had heretofore, and I will not interrupt Mr. Turkus?

The Court: Yes.

Mr. Talley: I object on the ground it is incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I showed him the card and I asked him what it was. He said, "That is my driver's card from Colorado."

7857

Mr. Turkus: I offer that driver's card in evidence. I ask that the original be checked and this photostatic copy be substituted and marked in evidence for the purpose of this trial. The photostatic copy thereof which was procured by the agent.

The Court: Show both the original and the photostat to counsel for the defense.

Mr. Talley: I object to it as incompetent, immaterial and irrelevant.

7858

Albert E. Aman—For People—Direct

Q. With respect to the photostat, Agent Amen, did you have this card, the Colorado State license, photostated? A. I did.

Q. Is it an identical photostat of the original?
A. It is.

Mr. Talley: My objection is pending, I take it.

7859

Mr. Turkus: May the record first note that the original exhibit and the photostat have been handed to counsel for Mendy Weiss, for inspection?

The Court: Is that a true photostat?

Mr. Talley: I have no objection to the photostat being substituted for the original, but I object to the being offered in evidence.

The Court: Objection overruled.

(Received and marked People's Exhibit 42.)

7860

Mr. Talley: Exception.

Mr. Turkus: May I read People's Exhibit 42 in evidence to the jury? The original item.

The Court: You cannot pass papers around which have not been marked. You may pass around the photostat.

Mr. Turkus: May I read the original?

The Court: Read the photostat. Counsel said there is no question about it.

Mr. Turkus: (Reading) "Operator's License. State of Colorado. No. A 9 6138.

"Always carry this license with you.

"Glasses:" marked "No."

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7861

"Name in Full: James William Bell.

"Street and No.: 204 South 7th Street

"City or P. O.: Rocky Ford, Colo.

"Age: 34. Sex: M. Weight: 215.
Height: 6'. "Color of Hair: Brown. Color
of Eyes: Grey.

"Date of Issue: June 6, 1949. Renew
license between Jan. 1 and July 1, 1943.

"Restriction, if any: None.

"Previous License No.: None.

"Date of Birth: Apr. 10, 1906.

7862

"Signature: James W. Bell"

And it says underneath signature:
"Above described person is hereby licensed
to operate a motor vehicle in accordance
with the provisions of Section 7, Chapter
164, S. L. 1935."

Signed "George E. Saunder,
"Secretary of State."

By Mr. Turkus:

Q. On the reverse side of this original exhibit,
Agent Aman, there appear to be the initials
"A.E.A. 4/6/41," the initials "J. B. 4/6/41."
Are those the signatures of yourself and Super-
visor Bell? A. They are.

7863

Q. Were those initials placed upon the Colo-
rado operator's license found in the possession
of Mendy Weiss, at the time it was recovered
from his person? A. They are.

Q. Before I continue with the other items in
there: Had you seen Weiss on April 6, 1941,
at any place other than where you found him in

7864

Albert E. Aman—For People—Direct

the automobile at or near the premises 3752 Highland Street, Kansas City, Missouri? A. I did not see Weiss before I saw his car.

Q. Had you seen his car earlier on April 6, 1941? A. I did.

Q. What time did you see it? A. At about 12:30 A. M., April 6th.

Q. Where did you see his car at that time?

7865

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. Directly across the street from the premises known as 3543 Olive Street, Kansas City, Missouri.

Q. Did you watch outside of that address and keep the car of Mendy Weiss under observation? A. I did.

Q. How long did you wait before you saw him? A. Until 20 minutes to 4 on April 6, 1941.

7866

Q. At 20 minutes to 4 in the morning, did you see Weiss emerge from any premises? A. I saw a group of people emerge from 3543 Olive Street and they got into various automobiles. I then saw Weiss and two women get into a Ford automobile bearing Missouri license 493 931—1941 license.

Q. Did you tail that automobile, as the expression goes? In other words, did you continue to follow it? A. I did.

Q. Did you follow it to the premises 3752 Highland Street? A. I did.

Q. Now, at that time did you have knowledge of the existence of a warrant for the arrest of Mendy Weiss? A. I did.

Albert E. Aman—For People—Direct

7867

Q. Was it at or about or near the premises 3752 Highland Street, Kansas City, Missouri, that you took the defendant Weiss into custody?

A. It was.

Q. Was it from there you took him over to an office, without describing the nature of the office, in Kansas City? A. I did.

Q. Was it in that office in Kansas City where you recovered the various documents, purported documents, and initialed them as you have stated before recess on Saturday? A. I did.

7868

Q. Will you describe what was the appearance of the defendant Mendy Weiss at that time? A. At that time Mendy Weiss was dressed in a greyish suit, no vest; he had a moustache and wore glasses.

Q. And, in describing that appearance, was that his appearance at the time you took him into custody? A. It was.

Q. In the office in Kansas City did the District Supervisor, Joseph Bell, ask him his name? A. He did.

Q. Was it at that time he said his name was James W. Bell? A. He did.

7869

Q. During the examination of these various documents and purported documents, did District Supervisor Bell say anything to Mendy Weiss with reference to his name? A. He said, "Mendy"—

Mr. Talley: I ask that it be answered yes or no.

A. Yes.

Q. What did he say?

7870

Albert E. Aman—For People—Direct

Mr. Talley: I object to that as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. He said, "Mendy, why don't you cut out the kidding? We know you are Mendy Weiss."

Q. Did Mendy Weiss make any response? A. He said, "All right, I am Mendy Weiss."

7871

Q. Was that conversation after the examination of all those documents and purported documents that were found on his person, or during the course of it, if you can recall? A. It was right after I had taken these documents from his person, but I had not examined them as yet.

Q. At the time you took him into custody, did you know his true identity? A. I did.

Q. Have you the originals there? A. I gave you all of the originals in a brown envelope.

7872

Q. Now, in addition to June 6, 1940, the Colorado license with the name of James W. Bell, did you find this (indicating) in the possession of Mendy Weiss? A. I did.

Q. Did you initial it in his presence? A. I did.

Q. And mark the date on it? A. Yes, sir.

Q. Was it initialed by District Supervisor Bell, and the date marked on it? A. It was.

Q. Was the defendant Mendy Weiss questioned with reference thereto? A. He was.

Q. What was he asked, and by whom?

Mr. Talley: I object to that on the same ground as I stated in the beginning, that was a Constitutional ground, which I take it will apply to all of this type of

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evidence or testimony sought to be introduced, without the necessity of my objecting on that ground each time. May I so consider your Honor's understanding?

The Court: Yes. I shall hold throughout that the provisions of the Federal Constitution was in accordance with the opinion of the Court of Appeals in the Defour case, as written by Judge Cardozo.

Mr. Talley: I note my exception to all rulings along that line, without feeling it incumbent upon me to make the same objection as each one of these documents may be produced. In this case I object on the ground it is incompetent, immaterial and irrelevant.

7874

The Court: Objection overruled.

Mr. Talley: I take an exception, together with the grounds as stated.

The Court: Yes.

Q. Will you answer, please? A. I asked him how he happened to have this bank book or check book. He said, "I have money in the bank."

7875

I said, "How did you happen to have it under the name of James W. Bell?" He said, "I wanted to get a book with a gold name on the outside."

I said, "How did you know such a book could be procured?" He said, "I was taken to the bank and found out about it."

Mr. Turkus: I offer in evidence the check book in the name of James W. Bell, together with the stubs and the checks

7876

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therein contained, and ask that the original be deemed marked in evidence, and that there be accepted in lieu thereof in this case a true and accurate photostatic copy thereof.

Mr. Talley: I make the same objection already urged.

The Court: Objection overruled.

Mr. Talley: Exception.

7877

Q. Before I pursue my offer, I will ask you this: Did you endeavor to take a photostatic copy of that book—that is, the leather back with the name "James W. Bell" in gold letters on it? A. Yes, sir.

Q. Would it come out? A. It did not.

Q. With reference to the photostat you did take, did you take a photostatic copy of the first check? A. I did.

Q. No. 17? A. That is right.

Q. And the other checks, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 15, are they identical in printing matter with that 17? A. They are.

7878

Q. Now, Check No. 15, which is a part of it, has a lot of figures written on it. Do you know anything about those figures? A. I do not, only that they were there when I took the check book.

Q. With respect to a portion of the exhibit that contains the stubs, did you take a photostatic copy of the portion under which the stubs appear? A. Yes, sir.

Q. Did you photostat the stubs too? A. No, sir.

Mr. Turkus: In lieu of the original book with a series of checks and stubs, I

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offer photostat of the first check and a photostat of the first sheet of the stubs. I will show them to counsel for the defendant Mendy Weiss for examination and inspection.

Mr. Talley: Objected to as incompetent, immaterial and irrelevant, together with the first ground stated.

The Court: Objection overruled.

Mr. Talley: Exception.

Mr. Turkus: I ask they be marked as one exhibit.

7880

(Received — two sheets — and marked People's Exhibit 43.)

Mr. Turkus: May I read that exhibit to the jury?

The Court: Yes.

Mr. Turkus: This is People's Exhibit 23, and consists of two pieces. The first is a photostatic copy of a check, the first check in a series of checks. It reads: "James W. Bell"—printed on—"420 West 46 St. Terrace, Kansas City, Missouri." Check "No. 17.

7881

"Kansas City, Kans. 194—

"Pay to the order of"—blank—

—blank —

"Dollars"

"Security National Bank,

"18-92 Kansas City, Kans."

The other portion of the exhibit is that which was found on the stub register, reading:

"Check Register No."—blank—

7882

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"This register contains the records of checks numbered from"—blank—"to"—blank—"and dated from"—blank—"to"—blank—and over, the signature of the agent, "A.E.A., 4/6/41," and "J. B., 4/16/41."

The Court: So that the jury will know what otherwise might be confusing, there is a part of Kansas City in Kansas and part of it in Missouri?

7883

The Witness: Yes, sir.

By the Court:

Q. Is Kansas City located at the junction of the Missouri and the Kaw? A. Yes, sir.

Q. That is the dividing line? A. No, sir, there is an imaginary line also.

Q. What is that? A. It runs southward on a street known as "State Line," from the intersection of the Kaw River and the Missouri River.

Q. That is what I mean, where the Armour plant is? A. Yes, sir.

7884

By Mr. Turkus:

Q. How far is Kansas City, Missouri, from the Federal Prison at Leavenworth? A. Approximately 35 miles, not over that.

Q. I show you a book and ask you if this is one of the papers you found in the possession of Mendy Weiss under the circumstances related to the jury. A. It is.

Q. At the time of this seizure did you initial it "A.E.A." and put the date "4/6/41" on it

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in the presence of the defendant Mendy Weiss?

A. I did.

Q. The photostat which I now hand you, is that a true photostat of the face of that book?

A. It is.

Mr. Turkus: I offer in evidence the original bank book and ask that it be deemed marked in evidence, and for the purposes of the trial a photostat of the face of it be accepted in evidence in lieu of the original. And I offer both the photostat and the original book to counsel for the defendant Mendy Weiss for inspection and examination.

7886

Mr. Talley: Same objection.

The Court: Same ruling.

Mr. Talley: Exception.

(Received and marked People's Exhibit 44.)

Mr. Turkus: This is a bank book—People's Exhibit 44—of the Security National Bank, Kansas City, Kansas, in the name of James W. Bell; deposits, October 1, 1940, \$1,000.

7887

Q. Did you ask the defendant, Mendy Weiss, if that was his bank account? A. I did.

Q. Did he say it was his? A. Yes.

Q. Under the name of James W. Bell? A. Yes, sir.

Q. Did he tell you that was the name he was using?

7888

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Mr. Talley: Objected to as leading.

The Court: Objection sustained.

Q. What name did the defendant Mendy Weiss say he was using? A. James W. Bell.

Mr. Talley: Objected to as leading.

The Court: Objection overruled.

Mr. Talley: Exception.

7889

Q. I hand you another card and ask you if that is another paper or card recovered from the possession of Mendy Weiss under the circumstances you have related to this jury. A. It is.

Q. Is that the original card recovered from his possession? A. One of a number.

Q. Does that contain your initials and date, and initials and date put on by Supervisor Bell? A. Yes, sir.

Q. Was that done in the presence of the defendant Mendy Weiss? A. It was.

Q. Was the defendant Mendy Weiss questioned with reference to that card? A. Yes, sir.

7890

Q. What was he asked and what did he say?

Mr. Talley: I object to that on the grounds already stated.

The Court: Let me see the card.

Objection overruled.

Mr. Talley: Exception.

A. I asked him how he happened to have this card, and if there was such a corporation. He said yes. I said, who were the other partners? "Well," he said, "I stuck \$500 in there with a fellow named Walter Rainey and a fellow named

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Beck." I said, "Is the mine doing business?" He said, "I don't know anything about the mine. You know how it is when you are on the lam, you have to have something to cover yourself up. All I wanted was vice-president or some other office in the corporation."

Mr. Turkus: The original card is offered in evidence. I ask the Court that it be received in evidence and marked, and a true and accurate photostat substituted as the actual exhibit.

7892

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

(Received and marked People's Exhibit 45.)

Q. Do I pronounce that correctly? Is that Chihuahua—that is the way it is spelled—"Chihuahua Tungsten Mining & Development, Black Hawk, Colorado. James W. Bell, Vice President."

7893

I hand you another card and ask you if this is one of the original cards you secured from the person and possession of the defendant Mendy Weiss under the circumstances already related to the jury. A. It is.

Q. Now, at the time you secured the original card on his person and under the circumstances related, did you have a talk with Mendy Weiss in reference thereto? A. I did.

Q. Will you relate to the Court and jury what

7894

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you asked Mendy Weiss in regard thereto and what he responded?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Let me see the card.

(Handed to the Court.)

The Court: Objection overruled.

Mr. Talley: Exception.

7895

A. The card is a Social Security Card, No. 5141906.

Mr. Talley: I object. The card speaks for itself.

Q. Yes. You told us what you asked him about that card. What did he tell you? A. I asked him if he was working. He said, "No, I am not working." He said, "I never work." I said, "Where did you get this Social Security card from?" He said, "Anybody can go over and get one of those things."

7896

Q. Did you go over to the place of issuance of the Social Security card and find out if that was correct, that anybody can walk in and get a Social Security card?

Mr. Talley: Objected to as incompetent, immaterial, and hearsay.

The Court: Objection sustained.

Q. Is this a photostat of the front and back of the Social Security card concerning which you have just testified? A. It is.

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7897

Mr. Turkus: Without repetition at all times in connection with the original and photostat, the photostat copy is offered in place of the original exhibit.

Mr. Talley: No objection to the photostat copy being offered in lieu of the original, but the exhibit is objected to on the ground it is incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

7898

(Received and marked People's Exhibit 46.)

Mr. Turkus: (Reading) "Social Security, Account No. 500-14-1906, has been established for James William Bell, 10/19/40; Worker's signature: J. W. Bell."

On the reverse side of the Social Security Account No. 500-14-1906, in red letters, "Worker's name: "James William Bell. Worker's home address: 420 West 46th Street, Ter., Kansas City, Missouri. Employer's name: (blank)."

7899

The exhibit bears the date "4/6/41," with the initials of the agent: "A.E.A." and the supervisor, "J. B."

Q. Now, among other cards found in the possession of Mendy Weiss, was this certificate or purported certificate found in his possession? A. It was.

Mr. Turkus: I offer it in evidence.

7900

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Mr. Talley: Objected to on the same grounds already urged.

The Court: Overruled.

Mr. Talley: Exception.

Mr. Turkus: I hand counsel for the defendant Mendy Weiss a registration certificate and photostatic copy thereof for inspection and examination.

(Received and marked People's Exhibit 47.)

7901

Mr. Talley: I ask your Honor to rule. The objection is urged, and I am not sure whether your Honor ruled on it or not.

The Court: It was overruled.

Mr. Talley: Exception.

Mr. Turkus: With the Court's permission I will read Exhibit 47 to the jury:

"Registration Certificate.

"This is to certify that in accordance with the Selective Service Proclamation of the President of The United States, James William Bell—first name, middle name, last name—James William Bell.

7902

"Number of Street or R. F. D. number—City or Town, County or State: 420 West 46th Street Terrace, Kansas City, Missouri, has been duly registered this 16th day of October, 1940." Signature of the registrar: "James H. Floyd, Registrar for the 18th Precinct, 7th Ward, City or County: Kansas City, State: Missouri." Signature on margin: "James William Bell." It says, "Registrant must

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sign here." Underneath the registrar's signature is this endorsement: "Be alert, keep in touch with your Local Board; notify Local Board immediately of change of address. Carry this card with you at all times. D. S. S. Form 2."

On the reverse side: "Description of Registrant: Height, 6 ft. approx. Weight, approx. 215. Race, White. Eyes, grey. Hair, brown. Complexion, ruddy. Other obvious physical characteristics that will aid in identification: 6-inch scar, lower right leg. U. S. Government, 16, 17, 105." Initialed by agent: "A.E.A." and District Supervisor, "J. B." "Date, 4/6/41."

7904

Q. Now, did you hold a conversation with the defendant Mendy Weiss in reference to that People's Exhibit 47, the registration—the Selective Service registration card? A. I did.

Q. What did you ask him about this Selective Service registration card, People's Exhibit 47?

7905

Mr. Talley: Objected to as incompetent, immaterial and irrelevant, no part of the issue.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I asked him if he registered from that address, 420 West 46th St. Terrace, Kansas City, Missouri, and he said "No." I asked him how old he was and he said, "Thirty-four." I asked him if he registered anywhere in the country, and he said "No."

7906

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Q. When he told you that did you ask him how he got this card, People's Exhibit 47 in evidence?

Mr. Talley: I make the same objection.

The Court: Same ruling.

Mr. Talley: Exception.

A. I did.

7907

Q. What did he say? A. He said, "I just got it."

Q. Did he give you any further information than, "I just got it"? A. No, sir.

Q. Did you go to the Selective Service Board appearing on the face of People's Exhibit 47 in evidence, namely, the board of James H. Floyd, Registrar, 18th Precinct, 7th Ward, Kansas City, Missouri, and make an investigation there? A. I did.

Q. Did you examine the records of that Selective Service Board?

7908

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I did.

Mr. Turkus: In order that we may save time, when the Judge overrules an objection, you may answer it; if he sustains it, you may not.

The Witness: Very well.

Mr. Talley: He is an experienced witness; he does not need that instruction;

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he knows how to answer. He knows how to conduct himself on the witness stand.

Mr. Turkus: And in investigations, too. Do you desire me to withdraw the instructions?

Mr. Talley: Not at all. I desire you to proceed with your examination.

Mr. Turkus: Will you resume your seat?

Mr. Talley: I will as soon as you put your question and I make my objection.

7910

Q. In pursuance to that investigation did you find the registration of James W. Bell, 420 West 46th St. Terrace, Kansas City?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: The witness has not shown that he knew how to examine the records or knew what particular books to look into. It will have to be shown.

Mr. Talley: It seems to me that the records themselves would be the best and only competent evidence, if he is going to disclose what is in the record.

7911

The Court: They are out of jurisdiction. Parol is admissible providing you qualify the witness, because the alleged record is out of jurisdiction.

Q. How many years have you been with the United States Government as an agent? A. About eleven and a half.

7912

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Q. How many years have you been with them since your first assignment? A. Eight years.

Q. What bureau were you in? A. The Department of Justice and the Treasury Department.

Q. What were your duties in the Department of Justice and the Treasury Department?

Mr. Talley: I object.

The Court: Objection overruled.

Mr. Talley: Exception.

7913

A. Investigator.

The Court: The question is specifically what he knows about investigation of records of this particular kind.

Q. For the other three and a half years of your Government service with what bureau or agency have you been connected?

Mr. Talley: I object. That in no way indicates he is qualified to examine these records.

7914

The Court: Objection overruled.

Mr. Talley: Exception.

A. The United States Treasury Department, Bureau of Narcotics.

Q. In the 11½ years you have been with the Government employ, have you done investigating? A. I have.

Q. And in pursuance of that and in the course of your duties, have you had occasion to check records? A. Yes, sir.

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Q. What kind of records have you checked in the eleven and a half years of service?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. It would cover a very extensive latitude checking the records of banks, checking the records of boiler factories, the records of banks, the records of savings institutions.

7916

Q. Have you checked records of the United States Government? A. I have.

Q. Have you checked records in connection with United States Selective Service registration? A. Not until this.

Q. Was that your first experience? A. Yes, sir.

Q. Did you check these records thoroughly?

Mr. Talley: I object; calling for a conclusion and characterization.

The Court: Where did you go to see these records and what records did you see?

7917

The Witness: I went to the local draft board in the community of 420 West 46th Street, Terrace, Kansas City, Missouri.

Q. Was it in the neighborhood embraced in that address? A. Yes, sir.

Q. In what that address was embraced? A. Yes, sir.

Q. What particular book or file did you look into? A. The clerk, Miss Booker, in my pres-

7918

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ence, for a period of about one hour and a half, examined them.

Mr. Talley: I object and move to strike it out.

The Court: Objection overruled.

Mr. Talley: It is not responsive to the question. I except.

By the Court:

7919

Q. Did you yourself check? A. I ran along all the records with her.

Q. You mean that you looked along with her to see what she was looking at? A. Yes, sir.

Q. Throughout that search? A. Yes, sir.

Q. What part of the file or books did you look at? A. There was an index file of cards, filing cards with street address.

Q. Are those in the selective draft? A. Yes, sir.

Q. Or the selective registration? A. Selective registration.

7920

Q. Did you cover the entire gamut? A. Yes, your Honor.

By Mr. Turkus:

Q. What did a search, investigation and inspection of these records of the selective service records reveal?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

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7921

A. That there was no registration of James W. Bell, 420 West 46th Street Terrace, Kansas City, Missouri; and that there was no other James W. Bell registered.

Q. Now, you stated you kept that automobile with a certain license number under observation, and that was the automobile in which you found the defendant Mendy Weiss, in company with two women, is that correct? A. Yes, sir.

Q. Do you recall what that license number was? A. It was Mo. 493931. It was a 1941 license.

7922

Q. (The Court) That was a Ford? A. Yes, your Honor.

Q. I show you a receipt and ask you if that is another one of the instruments found in the possession of Mendy Weiss under the circumstances already related by you to this Court and jury. A. It is.

Q. Was that initialed in the presence of the defendant Mendy Weiss by you and District Supervisor Bell? A. It was.

Q. This photostat I now hand you— Is that a true and accurate photostat of that exhibit? A. It is.

7923

Mr. Turkus: That exhibit is offered in evidence.

Q. (The Court) What did you say that license was? A. 493931.

Mr. Talley: I make the same objection to the offer as I made to the previous offer.

7924

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The Court: Same ruling.

Mr. Talley: Exception.

(Received and marked People's Exhibit 48.)

Mr. Turkus: May I read this exhibit to the jury?

The Court: Yes.

7925

Mr. Turkus (Reading) "Motor Vehicle License Receipt. Kansas City, Missouri. Number 35629. 1941 Tag No. 54236. Date—It has '194' and a blank. Received of Rose Bell. Address, 3752 Highland. Amount, \$500. Vehicle, Ford. Body, Sedan. Engine No. 18-58476. Horsepower, 30. Important—To transfer or replace remove license from windshield and present with this receipt. This license expires January 4, 1942. Paid, January 2nd, \$5. January 25, 1941, check, \$5."

7926

Q. (The Court) What is that, Tag No. 54236?
A. 1941, 54236.

Mr. Turkus: (Reading) "This is a receipt only for amount certified above. H. J. Gorman, City Treasurer. Personal checks accepted subject to final payment."

By the Court:

Q. Is that an automobile license? A. It is a city tag, a city vehicle tag.

Q. Is that a city vehicle tax? A. Yes, sir.

Q. What does "tag" mean? A. They get a little tag with a number corresponding to that.

Q. That is not supposed to be a State tax?
A. No, sir.

Q. A State automobile license number? A. That is just a city.

By Mr. Turkus:

Q. Did you question the defendant Mendy Weiss about this motor vehicle license receipt, People's Exhibit 48, in evidence? A. I did not.

7928

Q. Who were the two women you found with him? A. His wife, Mrs. Bell, and Fay Dilley.

Q. When you say his wife, Mrs. Bell, was that the name she had? A. No, sir.

Q. What name did she have? A. She gave the name of Rose Bell.

Q. This Mrs. Dilley, is that the woman who lived at that address on Highland—3754 Highland Street—did she live there? A. The same woman.

Q. Now, on this operator's license of Colorado, issued on June 6th, to James William Bell, People's Exhibit 42, in evidence, did you go to the premises 204 South 7th Street, Rocky Ford?
A. Yes, sir.

7929

Q. Did you conduct an investigation of those premises? A. Yes, sir.

Q. And did you ascertain who lived at those premises? A. I did.

Mr. Talley: Objected to as incompetent, immaterial and irrelevant, and it is hearsay.

The Court: It calls for a conclusion.

7930

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Q. All right, what did your examination disclose?

Mr. Talley: I make the same objection.

The Court: Same ruling.

Mr. Talley: Exception.

7931

Q. Did you ascertain who owned this apartment, or who leased it, 204 South 7th Street, Rocky Ford, Colorado, in pursuance of your investigation and the examination you made?

Mr. Talley: I make the same objection.

The Court: The same ruling.

Q. Did you have a conversation with the defendant Meady Weiss in reference to 204 South 7th Street, Rocky Ford, Colorado?

Mr. Talley: I object to it as incompetent, immaterial and irrelevant; not binding on any matter connected with this indictment.

7932

The Court: Objection overruled.

Mr. Talley: Exception.

A. I did not have any conversation with the defendant about that particular address.

Q. Did you, in reference to any other address?

Mr. Talley: I object on the same ground.

The Court: Objection overruled.

Mr. Talley: Exception.

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7933

A. I did, as far as 420 West 46th Street Terrace, Kansas City, Missouri, was concerned.

Q. What was discussed in reference thereto?

A. I asked him if he lived there.

Mr. Talley: I make the same objection on the same ground.

The Court: Objection overruled.

Mr. Talley: Exception.

Q. And what did he say? A. He said "Yes".

7934

Q. Did he tell you how long he had been living there under the name of James W. Bell?

A. No, sir, he did not.

Q. Well, now, I cannot go into the investigation you conducted in Colorado, but I will ask you if you found on the person of Mendy Weiss this prescription (indicating). A. I did.

Q. I hand you a photostat and ask you if that is a true photostat of the prescription. A. It is.

Q. Did you have a conversation with Mendy Weiss in reference to that prescription? A. I did.

7935

Q. What did you ask him about it and what did he say?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant, and on the further ground advocated with respect to all this line of testimony.

The Court: Let me see it.

Mr. Talley: The paper itself is not in evidence and cannot be inquired into.

The Court: There is nothing prejudicial; it is not a narcotic.

7936

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Mr. Turkus: There is no contention it is.

Mr. Talley: It should not be admitted, it has not bearing on this case.

The Court: Show it to Judge Talley.

Mr. Talley: It has a bearing—

Mr. Turkus: The Court just said in substance it has not.

The Court: It has a certain name on it. I said it was not prejudicial. It is not a narcotic prescription. It is a prescription for an ordinary cold.

7937

Mr. Talley: It is objected to on the ground it is incompetent, immaterial and irrelevant, and having no bearing upon the issue in this case.

The Court: Objection overruled.

Mr. Talley: Exception.

7938

Q. The first thing is the conversation. A. I asked him what the prescription was for. He said that while he was in Colorado during the summer of 1940 he fell off a horse and dislocated his arm.

Mr. Turkus: The prescription is offered in evidence—as a photostatic copy.

Mr. Talley: I ask that it be stricken out. I object to the offer of the prescription on the grounds already stated, sir.

The Court: Objection overruled.

Mr. Talley: Exception.

(Received and marked People's Exhibit 49.)

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7939

Mr. Turkus: With the Court's permission, I am reading People's Exhibit 49 to the jury. It is a prescription blank of "Dr. Geo. Wm. Bancroft.

"Physician and Surgeon

219. Ferguson Building.

Telephone Main 2259.

Hours: 11 A. M. to 12:30 P. M.

3 to 5 P. M.

Residence 314 West Del Norte.

Main 2871.

7940

For J. Bell.

R/''

Prescription written in Latin.

Mr. Talley: Read it all.

The Court: Read it all.

Mr. Turkus: I don't know how to read it.

Mr. Talley: Why stop at the important part?

Mr. Turkus: All right, you read it. I have not got the preliminary education and training you have had. I cannot read it.

7941

The Court: It is aspirin, phenacetin and codeine, and stated in medical language:

"Acetyl sal. acid 195
Acetphenetidin 065
Codeina sulph 0325
Take XII caps.

— One — 4 hrs. when having pain.

G. W. B., M.D."

Mr. Turkus: On the back of the exhibit is "Johnson English Drug Company, 134 North Tejon, Colorado Springs."

7942

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Q. Did the defendant Mendy Weiss make any statement about being in a hospital in Colorado Springs, Colorado, Rocky Ford?

Mr. Talley: Objected to.

The Court: Overruled.

Mr. Talley: Exception.

A. He did.

7943

Q. And what did he tell you? A. He said he fell off a horse, dislocated his arm, and had to go to the hospital.

Q. Saint Francis was it?

Mr. Talley: See how leading that is, if your Honor pleases? Objected to as leading.

The Court: Sustained.

Q. What hospital? A. He went to the Saint Francis Hospital, Colorado Springs, Colorado.

Q. Is this the duplicate original hospital record which I now hand you?

7944

Mr. Talley: That is objected to as being incompetent, irrelevant and immaterial, not the way to prove it.

The Court: Sustained.

A. It is.

Mr. Talley: I move to strike out the answer.

The Court: Strike it out.

Q. What is that paper?

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7945

Mr. Talley: Objected to upon the same ground.

The Court: He is not qualified to state.

Q. Agent Aman, did you go to Saint Francis Hospital? A. I did.

Q. You went there personally, did you? A. I did.

Q. In Colorado Springs, Colorado, right? A. I did.

Q. Did you there, in collaboration with an employee of the hospital make an inspection of the hospital records?

7946

Mr. Talley: I object to it as incompetent, irrelevant and immaterial, no bearing on the issues here.

The Court: Overruled.

Mr. Talley: Exception.

A. I did.

Q. Did you procure this paper which is now before you on the desk, at the Saint Francis Hospital?

7947

Mr. Talley: Object to it as incompetent, irrelevant and immaterial. It does not make any difference where he got it.

The Court: He can say yes or no.

A. Yes.

Q. Did the hospital maintain records?

Mr. Talley: Objected to as incompetent. The witness is not qualified to tell that.

7948

Albert E. Aman—For People—Direct

The Court: He can say if he saw records.

Q. Did you see any records there?

Mr. Talley: Same objection.

The Court: Overruled.

Mr. Talley: Exception.

A. I did.

7949

Q. And did you examine the records there?

A. I did.

Q. Is the record which is before you on the rail there a duplicate original record of the Saint Francis Hospital?

Mr. Talley: Objected to as incompetent, irrelevant and immaterial, not the proper way to prove records of a hospital.

The Court: He can say whether or not he compared it with the original.

7950

Q. Did you compare it with the original? A. I did.

Q. Tell the Court and jury how you came into possession of that paper?

Mr. Talley: I object to it as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Talley: Exception.

A. Sister Salina, in charge of the records of the St. Francis Hospital, Colorado Springs, Colorado, procured the original records and said that she could not let those go out of the hos-

Albert E. Aman—For People—Direct

7951

pital. In my presence she typed from the original record this record and I stood and watched the comparison.

Q. Is that paper which is before you a true and accurate copy of the hospital records and a duplicate original thereof?

Mr. Talley: Objected to as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Talley: Exception.

7952

A. It is.

Mr. Turkus: It is offered in evidence.

Mr. Talley: Same objection to it as I urged to the other questions. I take an exception.

The Court: The only authority under which any hospital record can possibly be admitted by way of certified copy would be the Civil Practice Act applying to public records. I can not see its applicability to records of a hospital in another State, particularly when not a public but a private institution. Sustained.

7953

Mr. Turkus: I ask that the hospital record be marked for identification.

(Paper photostat marked People's Exhibit Z-20 for identification.)

Mr. Talley: I move to strike out the testimony given by this witness with respect to these records.

The Court: Denied.

Mr. Talley: Exception.

7954

Albert E. Aman—For People—Direct

Q. In the conversation that you had with Mendy Weiss in which he said he fell off a horse, did he say how long he was in a hospital?

Mr. Talley: Objected to as immaterial.

The Court: Overruled.

Mr. Talley: Exception.

A. He did not.

7955

Q. After you secured these hospital records, did you have any further conversation with him or was he out of your jurisdiction? A. He was out of my jurisdiction.

Q. I hand you a yellow sheet of paper and ask you if that is another one of the papers found in the possession of the defendant Mendy Weiss under the circumstances already disclosed to the jury? A. It is not.

Q. Was that one found by you on investigation? A. Yes, sir.

Q. Under what circumstances did you procure that paper?

7956

Mr. Talley: Objected to as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Talley: Exception.

A. The motor number of the Ford automobile in which Mendy Weiss was riding the night that we apprehended him is 185847—

The Court: Not the contents.

Q. Not the contents of the paper, but tell us under what circumstances you secured it? A. I was going to do that.

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7957

Q. Continue. A. The motor number was 185-847630 and in checking with the Ford Motor people we learned that the car was sold by the—

Mr. Talley: I move to strike it out.

The Court: Strike it out.

Mr. Talley: Direct the jury—

The Court: The jury will disregard it.

Q. As the result of investigation that you made in connection with the registration of that automobile in which you found and apprehended Mendy Weiss, did you go some place? A. I did.

7958

Q. Where was the place you went? What was the name of it and the address?

Mr. Talley: Objected to.

The Court: Overruled.

Mr. Talley: Immaterial and irrelevant, having nothing to do with the issues here; merely an endeavor by indirection to bring out testimony that the District Attorney knows or should know has no part in this case.

7959

The Court: He can say whether or not he personally examined the motor number and compared it with the motor number as stated on the tag.

Mr. Turkus: There is a pending question first.

The Court: Did you?

The Witness: I did not.

The Court: He cannot state any hearsay.

7960

Albert E. Arman—For People—Direct

Mr. Turkus: I am not going to put in hearsay evidence. There is a pending question that has not been answered.

(Question read.)

Mr. Talley: That is objected to.

The Court: Overruled.

A. It is the Harry Grossman Ford Agency, Englewood, Colorado.

7961

Q. Did that place maintain records? A. They did.

Q. Did you examine the records of that agency? A. I did.

Mr. Talley: Objected to as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Talley: Exception.

Q. Did you examine the records with reference to a sale of a Ford V-8 Model 01A, Del. Fordor mtr. #18-5, 847,630?

7962

Mr. Talley: Same objection. We are trying a case of a theft of an automobile here.

The Court: Yes, it is sufficiently apparent that this will lead us into a corner where we will have to stop. No more of that.

Mr. Turkus: I am merely asking for a yes or no answer.

Mr. Talley: I object to the question.

The Court: Sustained.

Mr. Turkus: I ask that that paper concerning which we have been question-

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7963

ing the witness be marked for identification.

(Photostat marked People's Exhibit Z-21 for identification).

Q. This photostatic copy of an operator's license was not found in the possession of Mendy Weiss? A. No, sir.

Q. How was that procured?

7964

Mr. Cuff: Objected to.

The Court: Overruled.

Mr. Cuff: Exception.

A. State License Vehicle Bureau, State of Colorado.

Q. Did you personally go there? A. I did.

Q. Are the State records there kept in the usual conduct of the office? A. They are.

Q. Did you examine the records there in conjunction with an employee of the office? A. I did.

7965

Q. Did you see the original on file? A. I did.

Q. And was that photostat made in your presence? A. Yes, sir.

Q. Is that an exact duplicate of the original operator's license on file with the Bureau of Motor Vehicles, State of Colorado? A. It is.

By the Court:

Q. Did you personally compare it with the original? A. I did.

Q. Did you find it to be accurate in all respects? A. I did.

7966

Albert E. Aman—For People—Direct

Mr. Turkus: It is offered in evidence.

Mr. Talley: Objected to upon the ground it is incompetent, immaterial and irrelevant, not the way to prove a public document.

The Court: Overruled.

Mr. Talley: Exception.

Mr. Turkus: I am offering another photostat in lieu of that photostat because that is the one that bears the initials of the agent.

Mr. Talley: If I did not object, if your Honor pleases, I object to it now on the grounds already stated.

The Court: Let me look at it. Overruled.

Mr. Talley: Exception.

(Photostat received and marked People's Exhibit 50 in evidence).

Mr. Turkus: (Reading) "State of Colorado, Application for Operator's License, County of Otero, No. A 9 6138. Glasses checked No.

"Name in full. James William Bell.

Street and number. 204 South 7th Street, Rocky Ford, Colorado.

Age, 40.

Checked male.

Weight, 215.

Height, 6 feet.

Color of hair, brown.

Color of eyes, grey.

Date of issue, June 6, 1940.

7967

7968

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7969

Renew license between January 1 and July 2, 1943.

Restrictions, if any. None.

Previous license number. None.

Date of birth. April 10, 1900.

Signature, James W. Bell."

"Affidavit of applicant. The above signed applicant states that the information given herein is true to the best of his knowledge.

Sworn and subscribed to before me this 4th day of June, 1940.

7970

Paul A. Osborne, Examiner."

"Read this first.

"This entire form must without exception be filled out according to the instructions below or license cannot be issued.

Use only black ink or typewriter ribbon in filling out this form.

Print or type everything except the signature.

Give full name. Do not use, Mr., Mrs., Miss, or other titles with name.

7971

"Give permanent residence, not merely P. O. Box number.

Answer all questions.

Sign the application with your regular signature."

"Answer all questions below.

"Has your driving privilege ever been suspended? No. Or revoked? No.

Have you ever taken a driver's examination in this State for an operator's or chauffeur's license. In part—No. Or full examination. No.

7972

Albert E. Aman—For People—Direct

Have you been licensed as operator?
Where? None.

Have you ever been convicted of or forfeited bail for any violation of the State Motor Vehicle Laws? No.

Have you ever had an accident resulting in property damage, personal injury or fatality? No.

7973

Have you ever been afflicted with epilepsy or other mental or physical disability which might affect your operation of a motor vehicle? No.

How long have you known how to operate a motor vehicle? 18 years.

Do you understand highway warnings and direction signals? Yes.

Do you know that false statements herein will cause your license to be revoked? Yes."

"Physical condition.

"Eyes.

Color blind. No.

7974

Without glasses. Right, 20/30. Left, 20/40. Both, 20/25."

"Road signs.

"Number signs shown—10.

Grade on first test, 100.

P. A. O.
Examiner.

The applicant named herein has passed the examination on physical condition, written examination, and road signs.

Paul A. Osborn,
Examiner."

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7975

Q. I show you a driver's license card, and ask you if you found that on the person of Mendy Weiss? A. I did.

Q. I show you a photostat and ask you if it is a true photostatic copy of the said license? A. It is.

Mr. Turkus: The original license is offered in evidence in that it be deemed marked in evidence and receive in evidence the photostatic copy in lieu thereof.

7976

Mr. Talley: Objected to on the ground that it is incompetent, irrelevant and immaterial; upon the grounds already stated.

The Court: Overruled.

Mr. Talley: Exception.

(Photostat received and marked People's Exhibit 51 in evidence).

Mr. Turkus: With the Court's permission I am reading People's Exhibit 51 in evidence:

7977

"State of Missouri. Commissioner of Motor Vehicles, Missouri (and the seal of the State to the left).

Driver's License R License No. 1078237.

Name, James W. Bell.

Street and number, 420 West 46th Terrace.

City or P. O. K. C. Mo.

Is hereby licensed to operate a motor vehicle upon the public highways of this State. Expires two years from date.

7978

Albert E. Aman—For People—Direct

Age, 34. Race, W. Sex, M. Weight, 215. Height, 6 feet. Color of eyes, Gray. Color of hair, Brown. Date issued, Oct. 9, 1940.

Signature of licensee, James W. Bell.

Dwight H. Brown, Secretary of State.
V. H. Stewart, Commissioner of Motor Vehicles."

7979

Q. Did you speak to him about that particular license? A. I did not.

Q. That was among the papers and credentials, and purported credentials, found on his person, was it not?

Mr. Talley: Objected to, if your Honor please, calling for a conclusion; improper. I object to it as to form. It is already testified to.

The Court: Sustained on account of the word "credentials."

7980

Q. I show you this motor vehicle driver's license and ask you if that was found on the person of Mendy Weiss under the circumstances disclosed to the Court and jury? A. It was.

Q. Is this which I now hand you a true photostatic copy thereof?

Mr. Talley: Why don't you offer, Mr. District Attorney, the photostats you have without taking up the time asking if it is a photostat. I have stated no question would be raised as to the photostats being offered instead of the originals.

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7981

Mr. Turkus: All right, the photostatic copy is offered in evidence.

Mr. Talley: It is objected to upon the grounds already stated to similar documents that have been offered.

The Court: Let me see it.

Mr. Turkus: Better take the original.

The Court: The original is easier to read. Overruled.

Mr. Talley: Exception.

7982

(Photostat received and marked People's Exhibit 52 in evidence.)

Mr. Turkus: People's Exhibit 52 in evidence is the "motor vehicle driver's license, Kansas City, Mo. No. 153827 (in red type).

"Oct. 2, 1940.

"Name, James W. Bell.

Address, 420 West 46th Terrace.

Color eyes, gray.

Hair, brown.

7983

Sex, Male. Height, 6 ft. Weight, 215.

Signature of driver, James W. Bell.

Fee, fifty cents. Expires two years from above date.

James A. Taylor,
License Commissioner.

Keep this license in good condition."

Q. I hand you a photostatic copy and ask you under what circumstances you secured it? A.

7984

Albert E. Aman—For People—Direct

From the motor vehicle division, State of Colorado.

Q. Did you secure this photostatic copy which you have just seen at the Bureau of Motor Vehicles of the State of Colorado? A. I did.

Q. Is it a photostatic copy of an original record on file with that bureau?

7985

Mr. Talley: I object to it, if your Honor please, incompetent, not the proper way--

Mr. Turkus: It has not been offered yet. I have a right to inquire into the circumstances under which any paper was secured.

The Court: It makes no difference if it was given to him without a personal comparison with the original. It must be certified—

Mr. Turkus: I am going to prove that he did.

The Court: Please. (To reporter) How much have you got?

7986

(Remarks of the Court read.)

The Court: —and properly authenticated as required by law. Only if he himself compared it in all details with the original record seen by him and can swear that he found it upon such comparison to be correct, is it admissible.

Mr. Turkus: May I proceed with my examination?

The Court: Your question does not call for that information.

Mr. Turkus: I withdraw it in that form.

Q. Were you there personally at the office of the Motor Vehicle Bureau of the State of Colorado? A. I was.

Q. Were the original records of that bureau brought out in your presence? A. They were.

Q. Did you see the original record personally? A. I did.

Q. Did you make a comparison of this photostat with the original record? A. I did.

Q. Is it a true and accurate photostat of the original record to your own knowledge and from your own inspection and examination and comparison? A. It is.

7988

Mr. Turkus: It is offered in evidence.

Mr. Talley: I press my objection as incompetent.

The Court: Overruled.

Mr. Talley: Immaterial and irrelevant and not the proper way to prove a public document. Your Honor stated if the document itself is not produced a certified copy is the only proof—

The Court: This method of proving a public document which is without the jurisdiction of the State was followed before the statutes were enacted permitting certified copies to be admitted. This required no statute. It comes under the common law rules of evidence.

7989

Mr. Talley: Common law rules of evidence with respect to proof of evidence has been supplemented by the direct and specific statutory provision which tells how public documents may be introduced.

7990

Albert E. Aman—For People—Direct

The Court: That is supplementary.
Overruled.

Mr. Talley: Exception.

(Photostat received and marked People's Exhibit 53 in evidence.)

Mr. Turkus: (Reading) "State of Colorado. Application for a title for a motor vehicle.

7991

"State of Colorado, George E. Saunders, Secretary of State, Motor Vehicle Department, Certificate of Title Division, Denver, Colorado.

Sign here, Rose Bell.

Address, 204 So. 7th St.

I am the owner, or duly authorized agent of the owner of the described motor vehicle and make the following statements for the purpose of obtaining a certificate of title thereto; that said motor vehicle is subject to the chattel mortgage noted.

7992

State of Colorado, }
County of Otero. } ss:

being by me first duly sworn, on his oath states: That he is the duly authorized agent of the applicant above named; that the matters set forth in said application are true of his own knowledge.

Signature, Frank Hamer, County Clerk and Notary Public.

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7993

Note: This application must first be completed by applicant. Not to be accepted until reverse side has been completed as required.

Make, Ford. Title No. A 8636.

Year, 1940. Model O 1 A. County, Otero.

Style, DeL 4 dr. Motor No. 18-5-847 630.

Weight, 2856.

List price, 785.00.

Date purchased, 7-9-40. Date first sold,
7-9-40.

7994

Name, Rose Bell.

Address, 204 S. 7th, Rocky Ford.

The said motor vehicle is subject to the following chattel mortgage.

Amount, None.

Where purchased, Denver.

From whom purchaser, E. M. Weinstein.

Previous title No. A-139807. County, Denver."

And reverse side:

7995

"Make, Ford.

Year, 1940.

Motor No. 185847630.

Inspected by, Jack Ellison."

And stamped on it July 11—one dollar fee.

Mr. Talley: July 11th, what year, 1940?
I want you to add the year.

Mr. Turkus: I cannot add it if it is not there.

7996

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Mr. Talley: You just kept it back.

Mr. Turkus: You are not stating correctly for the record. Just a minute, you are going to have something on the record that is improper.

Mr. Talley: Read the date, cut out the talk and read the year.

Mr. Turkus: I cannot read it if it is not there. You read it yourself if you don't believe me. That is a fine accusation to make when you cannot even see it.

7997

Mr. Talley: Try your case. Don't be so childish.

Mr. Turkus: When you get a little peeved you don't care what you say.

Mr. Talley: Oh, yes, I do. I am very careful what I say on all occasions. I am reading here the date 7-9-40. Date purchased was 7-9-40.

Mr. Turkus: I read that five minutes ago, if you were listening.

Mr. Talley: Where is the other date that you read? I cannot make out any year.

7998

Mr. Turkus: Neither could I so we are in accord at last.

By Mr. Turkus:

Q. I hand you a piece of paper and ask you under what circumstances you secured that paper? A. On this one I wrote to the Secretary of State, Jefferson City, Missouri.

Q. So that you did not see that actually compared with the original? A. I did not.

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7999

Mr. Turkus: I merely ask that it be marked for identification.

(Marked People's Exhibit Z-22 for identification.)

Q. I hand you a photostatic copy of an instrument—I will hand you two of them and ask you how you secured them? A. Those I wrote to the Secretary of State, Jefferson City, Missouri.

Q. You did not see them actually compared with the original? A. I did not.

8000

Mr. Turkus: I ask that it be marked for identification. Which is the Government's exhibit, the black one or green one?

The Witness: The black one.

Mr. Turkus: I ask that this be marked for identification.

(Marked People's Exhibit Z-23 for identification.)

8001

Q. I show you a physician's prescription, and ask you where you secured it? A. From Emanuel Weiss on April 6, 1941.

Q. Is that one of the papers that was secured from his person under the circumstances you have testified to? A. It is.

Q. And is this a photostatic copy which I now hand you? A. It is.

Mr. Turkus: In lieu of offering the original the photostatic copy thereof is offered in evidence.

8002

Albert E. Aman—For People—Direct

Mr. Talley: Objected to upon the grounds already stated to similar type of evidence.

The Court: Overruled.

Mr. Talley: Exception.

(Received and marked People's Exhibit 54 in evidence.)

8003

Mr. Turkus: With the Court's permission I shall now read People's Exhibit 54 in evidence, prescription of "George William Bancroft, M.D., Physician and Surgeon" with the same residence and same office address as I have read before, bearing the initials of the agent "A.E.A., A. E. Aman, and J.B., Joseph Bell, District Supervisors, 4/6/41."

"Rec'd of James Bell, 40.00, 9-23-40. Signed Geo. W. Bancroft, M.D.

The Phillips-Smith Drug Co., Prescription Specialists, 117 South Tejon Street."

8004

Q. I show you a receipt and ask you where you found that receipt or how you secured it?

A. I secured that from Emanuel Weiss on April 6, 1941.

Q. Was that one of the papers on his person at the time that he was taken into custody? A. It was.

Mr. Turkus: The photostatic copy in lieu of the original is offered in evidence.

Mr. Talley: Let me see it, please. Objected to upon the grounds already stated;

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8005

upon the further ground it is incompetent, irrelevant and immaterial; is not the proper way to prove records of a hospital and that is what this is supposed to be.

Mr. Turkus: That is a paper taken from the possession of the defendant, not a hospital record.

Mr. Talley: It is objected to upon the grounds already stated.

The Court: Let me see it.

Mr. Turkus: That is a paper found on the person of the defendant under the circumstances described by the agent. That is a receipt, not a hospital record, a receipt which he secured under the name of James W. Bell.

8006

The Court: Overruled.

Mr. Talley: Exception.

(Photostat received and marked People's Exhibit 55 in evidence.)

Mr. Turkus: This is a receipt of "St. Francis Hospital and Sanatorium, Sisters of St. Francis, Colorado Springs, 8-29-40.

8007

"For services rendered James Bell" and across the face of it "Paid in full, L. Vandenberg, 8-29-40."

"Anesthetic fee, ether, 2.00

"8-29-40, X-ray, right elbow, 5.00. Fluorscope, 5.00

"Physiotherapy treatment, X-ray elbow, 5.00. 15.00 Total \$17.00".

Having the initials of Agent Aman and Supervisor Bell of 4/6/41.

8008

Albert E. Aman—For People—Direct

The Court: May I see that again?

Mr. Turkus: I am going to renew the offer now. In view of the receipt in evidence of People's Exhibit 55, the receipt of the St. Francis Hospital and Sanatorium, Sisters of St. Francis, found on the person of James Bell, I offer in evidence the hospital records of St. Francis Hospital heretofore marked Exhibit Z-20 for identification.

8009

Mr. Talley: Same objection as already urged to it on its previous presentation and rejection by the Court.

The Court: Sustained.

Q. I show you another receipt and ask you under what circumstances you found it? A. I took it from Emanuel Weiss April 6, 1941.

Q. Same circumstances as all the other papers you testified to? A. Yes, sir.

Q. And is this a photostatic copy of the said receipt secured under those circumstances? A. It is.

8010

Mr. Turkus: The photostatic copy, in lieu of the original, is offered in evidence.

Mr. Talley: Objected to upon the same grounds already indicated. I would like to look at the original or the photostat.

The Court: Overruled.

Mr. Talley: Exception. May I see it before it is marked in evidence?

The Court: Yes.

(Photostat received and marked People's Exhibit 56 in evidence.)

Mr. Turkus: With the Court's permission I will read People's Exhibit 56 to the jury. It is dated July 24, 1940. "Received of Rose Bell eleven and no/100 dollars, one year fire & theft & compr ins. 1940 Ford DeL Fordor Motor No. 18-5,630. Std. Finance Co. (meaning Standard Finance Company) by E. R. Dragoo. \$11.00."

Q. I show you a card and ask you if you found that in the possession of Mendy Weiss under the same circumstances as pertaining to all the other papers found? A. I did. 8012

Q. And is this a true and accurate photostatic copy of that card? A. It is.

Q. Did you have a conversation with the defendant Mendy Weiss in regard to that card? A. I did.

Q. What did you ask him?

Mr. Talley: Objected to as incompetent, irrelevant and immaterial.

The Court: Overruled.

8013

Mr. Talley: On all the grounds urged to the seizure of the papers in question. They would apply, if apply at all, to any conversations had by this Federal agent with the person from whom he seized the documents.

The Court: Overruled.

Mr. Talley: Exception.

A. I asked him if he owned a chicken farm and he said no and I said, "How do you happen to have this card with you?"

8014

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Mr. Talley: I object to any testimony with respect to any paper not in evidence.

The Court: Do you offer the paper?

Mr. Turkus: I will offer the paper.

Mr. Talley: Now I make the same objection to this paper as I made to the other papers taken under the circumstances.

8015

Mr. Turkus: The conversation will make the paper admissible. I wanted to do it in the proper way but as long as the offer is forced upon me, I have no other recourse but offer at this time. The conversation will make it explainable and understandable.

Mr. Talley: It might be well if the District Attorney knew the proper way to discuss a paper is to put it in evidence.

Mr. Turkus: The proper way is first get the materiality of it.

Mr. Talley: That is your erroneous idea.

8016

Mr. Turkus: I am very sorry, I am only a beginner.

The Court: Overruled.

Mr. Talley: Exception.

(Photostat received and marked People's Exhibit 57 in evidence.)

Mr. Turkus: This card says in type: "Frys" on the left side; on the right side "Broilers"; on the bottom it says "Eggs" on the left side; and on the right bottom "Hens". "Martin's indoor poultry farm. 77th and Blue Ridge, Fleming 1747."

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8017

Q. You got to the point where you related that you asked Mendy Weiss if he owned a chicken farm and he said he did not. A. That is right.

Q. When he said he did not own a farm, did you question him further in regard to this card, People's Exhibit 57?

Mr. Talley: Objected to, if your Honor please, upon the same grounds.

The Court: Overruled.

Mr. Talley: Exception.

8018

A. I asked him how he happened to have this card and he said, "Well, I go out there and buy chickens." He said, "I can call up and they will deliver them to me."

Q. Did he say that he had chickens delivered to his house?

Mr. Talley: I object to it, certainly immaterial, incompetent and irrelevant, not within any issues.

The Court: It may be relevant. I don't know.

8019

Mr. Turkus: I want to find out where the house was that these chickens were delivered to. Don't you understand, Judge Talley?

Mr. Talley: No, I don't understand. I certainly do not understand.

The Court: Overruled.

Mr. Talley: Exception.

(Pending question read.)

A. He said sometimes he went there and, if

8020

Albert E. Aman—For People—Direct

he wanted to, he could call up and they would deliver chickens.

Q. Did you go out to this farm, Martin's indoor poultry farm at 77th and Blue Ridge?

Mr. Talley: That is objected to, what chicken farms the agent visited.

The Court: Overruled.

Mr. Talley: Exception.

8021

A. I did.

Q. Did you there see the owner Louis Martin?

A. I did.

Q. Without revealing the conversation, did you have a talk with Louis Martin, the owner of the indoor poultry farm? A. I did.

Q. Where was that place located, near what city? A. Kansas City, Missouri.

Q. How far out of the city limits was it? A. I judge roughly about fifteen miles.

Q. Did you go somewhere with Louis Martin?

A. I did.

Q. Where did you go with him?

8022

Mr. Talley: Objected to as immaterial, incompetent and irrelevant.

The Court: Overruled.

Mr. Talley: Exception.

A. 700 West 48th Street, Kansas City, Missouri.

Q. Did you conduct an investigation with respect to a particular apartment and, if so, give me merely the apartment number?

Mr. Talley: That is objected to as in-

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8023

competent, irrelevant and immaterial, not within any issues involved in this trial.

The Court: Overruled.

Mr. Talley: Exception.

A. Apartment 302.

Q. While you were in Kansas City, Missouri, did you see an individual known as Cuppie? A. I did.

Q. What is his right name?

8024

Mr. Talley: Objected to.

A. May I correct my answer? I did not.

Q. Did you see his picture? A. I did.

Mr. Talley: I object to that, if your Honor pleases.

The Court: Nothing to show he knows Cuppie's picture. Sustained.

Mr. Turkus: I had an incorrect note.

Mr. Talley: I move to strike out the testimony.

8025

The Court: Strike it out.

Mr. Turkus: I have not finished. Strike out the testimony.

Mr. Talley: The answer that has been given to your previous question on this point.

Q. At the time that you went to premises 700 West 48th Street, Kansas City, and, specifically, apartment 302, did you have pictures in your possession of certain individuals? A. I did.

Mr. Talley: I object to that, if your Honor pleases.

8026

Albert E. Aman—For People—Direct

The Court: Overruled.

Mr. Talley: Immaterial and irrelevant.

The Court: Overruled.

Mr. Talley: Exception.

A. I did.

Q. Did you have pictures of whom?

8027

Mr. Talley: I object to that, entirely too far afield and speculative.

The Court: That calls for a conclusion, hearsay, as to who the people were, unless he knew them personally.

Mr. Turkus: All right, I won't pursue it.

Q. Well, did you there interview—yes or no—Henry Horton, the janitor of 700 West 48th Street? A. Yes.

8028

Mr. Talley: Objected to, if your Honor please.

The Court: Overruled.

Mr. Talley: Exception.

Q. Did you conduct an investigation with reference to the occupants of apartment 700 West 48th Street, Kansas City, Missouri?

Mr. Talley: Objected to, incompetent, irrelevant and immaterial, not within the issues here, and hearsay.

The Court: Overruled.

Mr. Talley: Exception.

A. I did.

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8029

Q. Will you describe that moustache that the defendant Mendy Weiss had at the time that he was placed in custody and apprehended?

Mr. Talley: Objected to as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Talley: Exception.

A. It was a reddish colored moustache on his upper lip, from one end of his mouth to the other.

8030

Q. Was it a big one or a hairline moustache?

A. Hairline.

Q. At the time that Mendy Weiss was taken into custody in that automobile in front of those premises, did he say something to you and District Supervisor Bell? A. Not to my knowledge.

Q. Did he at any time have a conversation in which the word "cops" was used? A. Not until later.

Q. When was that? A. In an office.

Q. Was that in the office in which these exhibits that we have just put into evidence were secured? A. Yes, sir.

8031

Q. What did he say then?

Mr. Talley: Objected to as incompetent, irrelevant and immaterial, too remote.

The Court: Overruled.

Mr. Talley: Exception.

A. That was about two hours later.

The Court: What did he say?

8032

Albert E. Aman—For People—Direct

A. And he said that he had been picked up about fifteen times for various traffic violations in Kansas City, Missouri, and that each time he talked his way out.

Mr. Talley: I move to strike that out, if your Honor pleases. It seems to justify the objection I made. It is immaterial and irrelevant, being picked up for traffic violations. That puts us all in a bad spot.

8033

Mr. Turkus: This is James W. Bell talking himself out under that name, James W. Bell.

The Court: You have not hooked him up with the use of the word "Bell."

Mr. Turkus: You can only go one step at a time.

Q. Will you continue with the entire conversation?

8034

Mr. Talley: I object to the entire conversation or any part of it.

The Court: I will let it stand for the present, see if it is hooked up. Otherwise it is only interesting.

Q. Continue what he said about how he talked himself out of it?

Mr. Talley: I object to the form of the question and object to the question itself.

The Court: Overruled. Give the entire conversation.

Mr. Talley: Exception.

A. The conversation started—

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8035

Mr. Talley: I object to that, if your Honor pleases. If we are going to have the conversation, let us have it. What did he say?

The Court: Give the conversation.

Q. He said, "If I had known that you fellows were Government agents I would have ran for it and you would not have taken me so easy," and I said, "What do you mean by that?" He said, "I know damn well that if I had made a break and got into the gangway, that none of you Federal men would shoot and you would have had a hell of a time finding me from there on."

8036

Mr. Talley: I move to strike it out, if your Honor pleases, as incompetent, highly prejudicial, having no bearing upon this case whatsoever one way or the other in the remotest respect. I move for the withdrawal of a juror and a mistrial because of that testimony.

8037

By the Court:

Q. Did you say "ran"? A. Yes, sir.

Q. You mean "run"? A. Run.

Q. Did you say "gangway"? A. Yes, sir.

The Court: Overruled. Denied.

Mr. Talley: Exception in both instances.

Q. What is the gangway? A. An areaway

8038

Albert E. Aman--For People--Direct

between houses in the city of Kansas City, Missouri.

Q. And are they laid out in that manner? A. Generally all through the city.

Q. And was there such a gangway or areaway in front of the premises in which you apprehended Mendy Weiss in that automobile? A. Yes, sir.

By the Court:

8039

Q. You don't mean areaway; you mean an alley? A. No, your Honor, the houses all have—ordinarily have a driveway on either side of the house and the garages are in the back of the lots.

The Court: In the East we call those alleyways or runways. Here when we speak of areaway we mean in front of a house, permitting a stairway to go down into the cellar. We understand you now.

8040

By Mr. Turkus:

Q. Did you have any conversation in the office in Kansas City in which the name "O'Dwyer" was mentioned by Mendy Weiss? A. Yes, sir.

Mr. Talley: Object to it as a leading question, if your Honor pleases. I move to strike out the answer.

The Court: Overruled.

Mr. Talley: Exception.

Albert E. Aman—For People—Direct

8041

Q. What did Mendy Weiss say in connection with that name? A. We were talking about bringing him to New York—

Q. Don't disclose the reason, but just merely state the conversation in which "O'Dwyer" was mentioned. A. And he said, "I don't mind going back to New York except that I hate to sit between O'Dwyer and Dewey." That conversation was studded very heavily with profanity.

Mr. Talley: I move to strike out this gentleman's addition to the conversation.

8042

Mr. Turkus: That was not an addition; that was a subtraction.

Mr. Talley: I move to strike out the whole answer.

The Court: Denied.

Mr. Talley: Exception.

Q. In other words, you have left the profanity out? A. Yes, sir.

The Court: Do you want it, Judge Talley?

8043

Mr. Talley: I do not want profanity.

Q. We will continue on without it. A. Shall I continue with the conversation?

Q. Yes, that is right. A. And he further added that O'Dwyer had been in St. Louis, Missouri, trying to make a big-shot out of himself over he, Weiss.

Q. And was that also studded with profanity?

A. The entire conversation.

Q. Did he further say something to you, in the

8044

Albert E. Aman—For People—Direct

presence of Supervisor Bell, in which O'Dwyer's name was again mentioned? A. I believe that is all the conversation that I recollect at this time.

Q. Did you take him to an aeroplane? A. I did.

Q. And was that aeroplane scheduled to go to New York? A. It was not.

Q. Who went with Weiss? A. It was not, not that aeroplane.

8045

Q. Where was that aeroplane scheduled to go? A. Omaha, Nebraska.

Q. Who went with Weiss? A. District Supervisor Bell and Agent Westover.

Q. At the time that you brought him to the plane scheduled to go to Omaha, in company with District Supervisor Bell and Agent Westover, had Mendy Weiss been continually in your presence and sight? A. From the time of his being detained.

Q. Did you ever let him out of your sight once? A. I did not personally.

8046

Mr. Turkus: The witness is offered for cross-examination.

Mr. Climenko: If your Honor please, at this point, on behalf of the defendant Buchalter, I move to strike all of the testimony of this witness upon the ground that it is not competent against that defendant nor is it binding on him.

The Court: Denied.

Mr. Climenko: Exception.

The Court: For reasons heretofore stated on similar motions.

Mr. Rosenthal: My motion which I

Albert E. Aman—For People—Direct

8047

make as to this witness is similar to the motions I have made throughout the trial as to the numerous witnesses who were called and who did not affect the defendant Capone, and I again renew the motion for the withdrawal of a juror on the grounds mentioned in my original motion for a severance throughout the trial.

The Court: Denied.

Mr. Rosenthal: I respectfully except.

Mr. Talley: Shall I commence?

8048

The Court: You have only three minutes to go, so you better rest up for the next hour. Everybody kindly remain seated.

Gentlemen of the jury, luncheon will be provided. We will resume promptly at 1:30. Please do not discuss the case. Let nobody talk to you about it. Keep your minds open.

The witness may go and return at 1:30.

The jury out of the other door.

Defendants are remanded.

8049

(Recess until 1:30).

8050

Albert E. Aman—For People—Cross

(AFTERNOON SESSION TRIAL RESUMED.)

ALBERT E. AMAN, resumed the stand and further testified, as follows:

Cross examination by Mr. Talley (continued):

8051

Q. You told us, I think, that the office to which this man was taken by you was the office of the supervisor of your district, is that right? A. I did not say that.

Q. The supervisor of the district in Kansas City? A. It is the office of the United States Bureau of Narcotics.

Q. The supervisor of that office? A. Yes, sir.

Q. Joseph Bell? A. Yes, sir.

Q. Did he take any part in the examination you made of the man who said his name was James W. Bell? A. I did.

Q. Did he? A. Yes, sir.

Q. Did he ask him questions? A. He asked him his name.

8052

Q. Is that all he inquired about? A. He talked to him about coming back to New York.

The Court: Don't tell what he talked about; just say yes or no.

The Witness: Yes.

Q. And that was all? A. He may have asked other questions.

Q. You practically conducted the investigation and examination? A. Yes, sir.

Q. Alone? A. In his presence.

Q. And when you made the arrest, you de-

scribed about waiting and watching his car, were you alone then? A. No, sir.

Q. How many other agents were with you? A. There were four others.

Q. Did any of those four others ask any questions? A. They did not.

Q. You conducted the entire inquiry and investigation? A. Yes, sir.

Q. At the time you put him under arrest, I think you said you had no search warrant and you had no warrant for his arrest, didn't you? A. That is right.

8054

Q. But you knew there was a warrant pending? A. Yes, sir.

Q. That was a warrant from the Federal Court, wasn't it, giving you jurisdiction? A. Yes, sir.

Q. Was that Federal Court in the Federal District of New York? A. I am not familiar with the judicial districts, but Brooklyn.

Q. Was the Eastern District of New York? A. I am not familiar with the judicial districts.

Q. Were you also advised there was a warrant in Texas for him? A. I was.

8055

Q. You say you made the arrest and the search and seizure because of your knowledge that this warrant existed from the Federal Court of New York and the Federal Court of Texas, is that right? A. Yes, sir.

Q. Did you say anything to the defendant Weiss about taking him to Texas? A. Mr. Bell did.

Q. Mr. Bell offered him to take him either to Texas or to New York? A. Yes, sir.

8056

Albert E. Aman—For People—Redirect

Q. And Weiss selected New York? A. Yes, sir.

Q. And in all that you have done in this connection you were working as a Federal agent, weren't you? A. Yes, sir.

Mr. Talley: I have no further questions.

Redirect examination by Mr. Turkus:

8057

Q. At the time you apprehended and made the arrest of the defendant, Emanuel Wendy Weiss, did you have knowledge of the existence of a warrant in this murder case?

Mr. Talley: I object to it.

The Court: Objection sustained.

8058

Mr. Barshay: May I resume my motion at this time to strike out the testimony of the witness with respect to the defendant Buchalter, on the ground it is in no way binding upon him and has nothing to do with flight by the defendant Buchalter, nor is it in any wise whatever connected with him?

The Court: I make the same denial for the same reasons I have on all other similar motions. I will say to the jury again that the question of flight or hiding is applicable only in reference or in relation to the person who does it.

JOSEPH BELL, residing at 743 U. S. Court House, Kansas City, Missouri, called as a witness on behalf of the People, after being duly sworn, testified as follows:

Direct examination by Mr. Turkus:

Q. Are you District Supervisor in the employ of the United States Government? A. I am.

Q. How long have you been attached to the United States Government? A. Approximately nineteen years.

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Q. With what bureau or agency of the United States Government are you attached or connected with? A. The Bureau of Narcotics.

Q. Where are you District Supervisor? A. In Kansas City, Missouri.

Q. On April 6, 1941, did you see one of the defendants who is now in court? A. I did.

Q. Which one? A. Emanuel Weiss.

Mr. Barshay: Will your Honor give me one general objection to this man's testimony.

8061

The Court: Yes, overruled.

Mr. Barshay: Exception.

Q. Where did you see him for the first time? A. Seated in an automobile in front of 3752 Highland Avenue, in the city of Kansas City, Missouri.

Q. At that time he was seated in the automobile were there others with him? A. There were.

Q. Who was with him? A. A woman who

8062

Joseph Bell—For People—Direct

said her name was Rose Bell and a woman named Fay Dilley.

Q. The woman who gave the name of Rose Bell, was she claimed to have any relationship by the defendant Weiss to himself? A. She said she was his wife.

Q. Do you see that woman in court? A. I do.

8063

Q. Pick her out. A. I think it is in the second row there, the fourth woman from the aisle, to the right (indicating), with the black hat and the pin on her coat.

Q. The one with the large pin? A. Yes, sir.

Q. Will you stand up? A. Not that one— the one next to her, to her right.

Mr. Turkus (Addressing woman in court room): Will you stand up, please, and give your name to the stenographer?

Mr. Talley: I will give it to you. Mrs. Emanuel Weiss.

Mr. Turkus: The defendant Mendy Weiss' wife?

8064

Mr. Talley: Yes.

Q. Was there any other woman in this automobile? A. A woman named Fay Dilley.

Q. Is that (spelling) D-i-l-l-e-y? A. Yes, sir.

Q. Was the defendant Emanuel Weiss taken to an office in Kansas City? A. He was.

Q. At the time he was apprehended did you have knowledge of the existence of warrants against the defendant Mendy Weiss? A. I did.

Q. Where, in Kansas City, was he taken, to what office? A. Room 532 in the General Post-office Building, in my office.

Q. In your office did you ask him his name?
A. I did.

Q. What name did he give you? A. Jim Bell.

Q. Were you present when Agent Aman examined certain papers and instruments found on the defendant Mendy Weiss' possession? A. I was.

Q. At any time during the course of the examination of these papers did you say anything to Weiss in reference to his true identity? A. As soon as I brought Weiss to this office I asked him his name, and he said, "Jim Bell," and I walked him over to the board and showed him his picture and asked him if he knew the individual in that picture, and he made no comment, and I said, "Well, cut out the fooling, Mendy, we know you are Mendy Weiss." He said, "Well, you've got me, I am Mendy Weiss."

8066

Q. That picture you showed him, was that a picture of Mendy Weiss? A. Yes, sir.

Q. At the time you found and apprehended this defendant, Mendy Weiss, in this automobile in Kansas City, will you describe to the jury what his appearance was then? A. At that time he was wearing glasses and he had a mustache.

8067

Q. Now, that picture of Mendy Weiss you exhibited to him, did that picture have glasses and a mustache? A. It did not.

Q. Were you present and did you talk to him, together with Agent Aman, initial all the papers and documents found in the possession of Mendy Weiss, and inscribe the date of the discovery thereof upon the same? A. Yes, sir.

Q. At any time did you have any conversation with the defendant Mendy Weiss in connection

8068

Joseph Bell—For People—Direct

with an individual known as Cuppie? A. No, sir, I did not.

Q. At some time during this conversation with the defendant Emanuel, alias Mendy Weiss, did you have any conversation in which the word "cops" was mentioned? A. Yes, sir.

Q. What did he say at that time?

Mr. Talley: I object. It is incompetent, immaterial and irrelevant.

8069

The Court: Objection overruled.

Mr. Talley: Exception.

A. He said at the time, "If I knew you were not cops, you would not have taken me so easy."

Q. When did he make that statement? A. Shortly after we brought him to the office.

Q. Was there a time in any conversation when he was apprised of the nature of the charge against him? A. Yes.

Q. At that time did Mendy Weiss make any response?

8070

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

Mr. Turkus: I am referring specifically to a conversation in which the name of Judge O'Dwyer was mentioned.

Mr. Talley: I object.

The Court: Objection overruled.

Mr. Talley: Exception.

A. At one time during the conversation it was said that he did not think I would believe him what he was telling me, what he was going to tell me, but he said he had intentions of sur-

rendering at a later date when O'Dwyer, in New York, would leave office.

Q. Did you accompany him to an aeroplane?

A. I did.

Q. Did you go in the aeroplane with him? A. Yes, sir.

Q. Where did he go in that aeroplane with you? A. To New York City.

Q. Was there another agent with you? A. Yes.

Q. What was his name? A. H. V. West-over (?).

8072

Q. Where did you, Supervisor Bell, and West-over, go with the defendant Mendy Weiss? A. When I got to New York, or when we left Kansas City?

Q. When you got to New York. A. There was some agents waiting for us at the airport and they took him into custody. I don't know where they went with him.

Cross examination by Mr. Talley:

Q. You were present when Weiss was searched? A. Yes, sir.

8073

Q. He did not have a gun or any other kind of a weapon on him? A. No, sir, he had no gun.

Q. You say he said if he did not know you were cops you never would have taken him? A. That we would not have taken him so easy.

Q. Was anybody present with you when you showed him his picture which you say was on the wall? A. There were two or three other agents around; I don't know whether they were close enough to hear the conversation.

8074

Joseph Bell—For People—Cross

Q. Agent Aman was with you in the room?

A. Yes, sir.

Q. He was close enough to hear you, wasn't he?

Mr. Turkus: Objected to as a conclusion, as to what Aman heard.

8075

Q. Well, can you say how far away he was at that particular time? A. At that particular time I showed Weiss that picture I think he and Weiss were half of the board away.

Q. What distance do you say Weiss was from you? A. I could not say at that time because the agents were busy moving around. I think he was in the vicinity there.

Q. But you say he was not within earshot!

Mr. Turkus: Objected to as incompetent and improper in form.

8076

Q. How close was he to you? A. There were times when Aman was two or three feet away.

Q. When you were showing him the picture on the wall, how close was Aman to you? A. He was close by in the room; I could not say exactly in feet or inches.

Q. Can you tell us whether two or three feet? A. He was more than three feet.

Q. Can you indicate by the rail of that jury box from where you sit how far he was away from you? A. Possibly at that particular time, as close as I can remember, would be about to the end of the jury box.

Q. The end of the jury row or the end of the jury box? A. The end of the jury box.

Q. Including the openings there? A. Yes, sir.

The Court: The far end or the near end?

The Witness: The far end.

Q. Is that picture you showed him in your room or in an adjoining room? A. That was in the large room.

Q. In the room in which the examination of him and his effects was made? A. No, sir.

8078

Q. It was not? A. No, sir.

Q. Was it the first room to which he was taken when he was brought in? A. Yes, sir.

Q. Did you take him first into the large room? A. Well, that is the main entrance to the office—the large room.

Q. Where was the picture that you say you showed him? A. In the large room.

Q. Was that amongst other pictures that were hanging in the large room? A. Yes, sir.

Q. That was a picture issued by the Federal authorities, wasn't it? A. Yes, sir, that is right.

Q. And had to do with some Federal offense with which whoever's picture was there related to? A. Yes, sir.

8079

Q. Now, you proposed to Weiss that you would take him either to Texas or New York, didn't you? A. Yes, sir.

Q. It was he who designated New York as the place he wanted to be taken to? A. Yes, sir, eventually, yes, he said he would go back to New York.

Mr. Talley: I move to strike out "even-

8080

Joseph Bell—For People—Cross

tually'' as part of the answer as not responsive.

Mr. Turkus: I ask that it stand because it shows a discussion that extended over a period of time.

The Court: You can come back to it. He was stating an opinion. Strike it out.

8081

Q. In addition to saying he would come back to New York, he waived extradition, didn't he?
A. Yes, sir.

Q. That is, he did not require the authorities to go into court to extradite him from the State of Kansas to the State of New York, or Texas either? A. That is right.

By Mr. Turkus:

Q. How long was that conversation in which he finally stated he would go to New York City?

8082

Mr. Talley: I object to the form of the question. The word "finally" is objectionable.

The Court: Leave out "finally".

Q. How long was it before he said he would come to New York? A. I would say around thirty-five or forty minutes.

By Mr. Talley:

Q. You were not talking to him for thirty-five or forty minutes on the question of whether he was going to New York or not, were you? A.

That was practically the substance of the conversation.

Q. All of it? A. Yes, sir, the most of it.

Q. Did you conduct the conversation with him?

A. I did, and Mr. Aman.

Q. Who did most of the talking during those thirty-five or forty minutes, you or Aman? A. I would say we talked about equally; I could not say how many words each said.

Q. You think you asked twice as many questions as Mr. Aman did and got as many answers? A. I would say so.

8084

Q. You did not turn the entire investigation over to Mr. Aman when Weiss was brought in? A. I did. I was in the office for about thirty-five or forty minutes and then I went home, and Mr. Aman talked with him for an hour or two afterwards.

Q. But in the thirty-five or forty minutes you say you were there, do you say that was taken up entirely with the question of whether Weiss would go to Texas or to New York? A. Not entirely, but I would say a good part of it, about ninety percent was.

8085

Q. Ninety percent? A. Yes, sir.

Q. Weren't you discussing the papers you had seized from his person? A. Yes, sir.

Q. That was in the thirty-five or forty minutes, wasn't it? A. The discussion of the papers taken from Weiss' person did not take up much of my time because he did not have much to say about it.

Q. He was asked questions about each one of them, wasn't he? A. Yes, sir.

Q. By you? A. No, sir, Mr. Aman did most of the questioning.

8086

Joseph Bell—For People—Cross

Q. But in your presence? A. Yes, sir.

Q. And that talk was the larger part of thirty-five or forty minutes during which you were there? A. I don't think that took more than fifteen or twenty minutes.

Q. How many papers did you take away from him in that session? A. I could not tell you the exact number.

Q. Probably twenty-five or thirty? A. I would say about twenty-five.

8087

Q. He was questioned about each one, wasn't he? A. Yes.

Q. In your presence? A. Yes, sir.

Q. Do you still say it did not take the larger part of the thirty-five or forty minutes in which you were engaged in the inquiry? A. I would say that, yes, sir.

Q. Now, after each paper was inquired into, you put your initials on each one, didn't you? A. I believe I initialed all of them.

Q. The papers that have been introduced here bear what Agent Aman said are your initials? A. Yes, sir.

8088

Q. So you don't refute you took each one of these papers after being presented and put your initials on? A. I think I initialed all of them; I may not; I was in a hurry to go out; I had some other things to do.

Q. You did initial them during the thirty-five or forty minutes you were inquiring about that from Weiss, didn't you? A. No, sir, I initialed them after he was in another room; after we talked to him about the papers, yes, sir.

Q. The initialing was done during that thirty-five or forty minutes during which you were

present at the interview? A. After the discussion about the papers.

Q. How long after? A. About two or three minutes probably.

Q. In his presence or away from him? A. No, sir, it was not in his presence.

Q. Then you were only initialing them as papers that had been brought to your office and not as papers that had been identified by him, is that correct? A. No, sir, that is not correct.

Q. Despite the fact that all these papers which have been introduced in evidence, and there are a considerable number of them which were not introduced, all bear your initials, and you say that ninety percent of the time was occupied in discussing with Weiss whether he would go to Texas or New York? 8090

Mr. Turkus: I object to the preamble.
The Court: Objection sustained.

Q. Is it your testimony that of the thirty-five or forty minutes during which you had Weiss in your office, in either room, that ninety percent of that thirty-five or forty minutes was taken up with the discussion of whether he would go to New York or to Texas? 8091

The Court: The Court has just ruled on that. Do not repeat.

Mr. Talley: The objection was made as to the preamble of the question. This is a different question.

The Court: I sustained the objection.

Mr. Talley: Then your Honor does not

8092

Joseph Bell—For People—Cross

wish this to be pressed? There was no objection to it. —

The Court: No.

Mr. Talley: I take exception.

8093

Q. Do you now say, Mr. Bell, that thirty-five or forty minutes of the conversation you had with Weiss, in his presence, was taken up with discussion of whether he would go back to New York or to Texas? A. I don't say all of that; I said most of the discussion was in reference to going back to New York or Texas; I did not look at any clock.

Q. Did you say about ninety percent was taken up? A. I would say about eighty percent, probably eighty-five.

Q. That was really the first thing you started to discuss with him? A. No, sir, the first thing we talked about were the papers in his possession, and his identity, and so on and so forth.

8094

Mr. Talley: I have no further questions.

Mr. Barshay: I renew my motion to strike out this witness' testimony on the grounds heretofore set forth. May I ask your Honor to instruct the jury, referring to the testimony of this witness, in the same manner as you did with respect to the testimony of Mr. Aman?

The Court: The same ruling; the same instruction.

Mr. Rosenthal: May I make a similar motion to the one I made with respect to Agent Aman's testimony?

The Court: Yes. As to flight or hiding, neither Buchalter nor Capone can be

James C. Ryan—For People—Direct

8095

linked up unless it be shown that they were instrumental in it, under Section 2 of the Penal Law.

Mr. Rosenthal: I assume your Honor makes the same ruling as you did with respect to Agent Aman when I made the motion?

The Court: Yes.

Mr. Rosenthal: Then your Honor overrules the objection, and I take an exception.

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The Court: Yes.

JAMES C. RYAN, residing at 90 Church Street, Borough of Manhattan, City and State of New York, called as a witness on behalf of the People, after being duly sworn, testified as follows:

Direct examination by Mr. Turkus:

Q. Are you employed by the United States Government? A. Yes.

8097

Q. In what bureau or agency? A. I am with the Federal Bureau of Narcotics, the Treasury Department.

Q. Where is your office? A. Number 90 Church Street, New York City.

Q. Did you see the defendant, Emanuel Mendy Weiss, some time during the month of April, 1941? A. Yes, sir.

Q. Where did you see him? A. I saw him on the night of April 5, 1941.

8098

James C. Ryan—For People—Direct

Q. Where did you see him for the first time?

A. I saw him when he disembarked from a plane at La Guardia Field, at about 8:30 or so in the evening.

Q. At the time he got out of the plane at La Guardia Field, did he have a mustache on him then? A. I believe he did—I don't recall exactly; I believe he did.

8099

Mr. Talley: I move to strike it out.

Mr. Turkus: I have no objection.

The Court: Strike it out.

Q. Did you go some place with the defendant Mendy Weiss? A. He was turned over to me and I accompanied him to the Federal detention quarters, 11th and West Streets, New York.

Q. Did you bring him inside? A. Into the detention quarters, yes, sir.

Q. Did you see him remove certain possessions from his pocket? A. Yes, sir, I did.

8100

Q. What did he remove? A. He was requested to surrender all his personal property before being admitted into the prison, and I saw him remove a diamond ring, I can recall, a buckle with a diamond signet on it, and about \$2700.—\$2713. in cash.

Q. \$2713. in cash, do you remember the denomination of one specific bill?

Mr. Talley: I object. It is immaterial, incompetent and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

James C. Ryan—For People—Direct

8101

A. I recall particularly there was a one thousand dollar bill and there were several one hundred dollar bills and other smaller bills, and about two dollars in change.

Q. That diamond studded— Was that a diamond studded belt buckle?

Mr. Talley: Objected to.

The Court: Objection overruled.

Mr. Talley: Exception.

A. It was a star which was outlined in diamonds.

8102

The Court: Is the purpose of this to connect up that one thousand dollar bill?

Mr. Turkus: No, to show the amount of money he had under the name of James W. Bell, to enable him to continue this flight; similarly, the disguise of the mustache; assuming the identity of James W. Bell, and all the papers under the name of Bell.

Mr. Talley: I object. That is an improper statement from the District Attorney.

8103

Mr. Turkus: So he could go away on flight.

Mr. Talley: I ask your Honor to instruct the jury to disregard it.

The Court: I am asking for this reason—the pass book showed that in October, 1940, there was one deposit of \$1,000. The check book shows there were some withdrawals, and the check book apparently does not account for the expenses

8104

James C. Ryan—For People—Cross

that he may have reasonably been put to. Now, you say when he was brought here he had \$2,713. in cash, and he had jewelry in addition, diamonds, which could be changed into terms of currency. From your argument, you are preparing to show continued flight and hiding?

8105

Mr. Turkus: Yes, and bearing in mind the further admissions he made to District Supervisor Bell as to what he would do when O'Dwyer went out of office, showing how long he intended to stay away on his flight.

The Court: The reason for my inquiry was that you mentioned a specific bill. I did not know whether you were making a particular note of that.

Mr. Turkus: No, sir, that is different money entirely.

The Court: The thousand dollar bill was part of the \$2,713. in actual cash in his pocket?

8106

Mr. Turkus: Yes, sir, that is right.

The Court: The objection is overruled.

Mr. Talley: Exception.

Cross examination by Mr. Talley:

Q. You are not a diamond expert? A. No, sir.

Q. You don't know whether these stones and rings you described were diamonds or imitations?

A. I was only guided by the defendant's own statement.

Q. You took his statement, of course, that they were diamond rings? A. Yes, sir.

James C. Ryan—For People—Cross

8107

Mr. Talley: No further questions.

Mr. Barshay: I move to strike out this witness' testimony on behalf of the defendant Buchalter, on the grounds heretofore stated with respect to the testimony of the other agents.

Mr. Rosenthal: I make the same motion as regards Mr. Ryan.

The Court: Same ruling.

Defense Counsel: Exception.

8108

By Mr. Talley:

Q. After you lodged Weiss in the Federal Detention Prison on West Street, Manhattan, did you accompany him anywhere the next morning?

A. No, sir, I did not.

Q. Was he arraigned in any court, as far as you know? A. I believe he was. I cannot say of my own knowledge.

Mr. Talley: Then don't guess at it. Nothing further.

Mr. Rosenthal: May I have the same motion as heretofore and exception?

8109

The Court: Same ruling and exception.

8110

Thomas J. Winne—For People—Direct

THOMAS J. WINNE, residing at 2667 Morris Avenue, Borough of Bronx, City and State of New York, called as a witness on behalf of the People, after being duly sworn, testified as follows:

Direct examination by Mr. Turkus:

Q. What is your business or occupation? A. A custodial officer.

8111

Q. Where are you employed? A. Federal Detention Headquarters.

Q. Is that in the employ of the United States Government? A. Yes, sir.

Q. How many years have you been in the employ of the United States Government? A. About three and a half years.

Q. How many years have you been at the Federal Detention Pen? A. One year and a half.

Q. On or about April 6, 1941, did you see the defendant Mendy Weiss in your institution? A. Yes, sir.

8112

Q. Were you there when he was admitted there-to? A. Yes, sir.

Q. Did you have a conversation with him there in reference to his personal belongings and valuables? A. I made him check them off out of his pocket.

Q. When you made him check them out of his pocket, what did you see?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant, no bearing upon the issue we are here to try.

The Court: Objection overruled.

Mr. Talley: Exception.

A. Several pieces of jewelry and some cash.

Q. Several pieces of jewelry, what were they?

A. A watch, a ring, a belt buckle.

Q. What kind of a ring was it? A. A diamond ring.

Q. What kind of a belt buckle was it? A. It may have been a gold buckle with a stone in it.

Mr. Talley: I move to strike it out.

Mr. Turkus: Consented to.

Q. Tell me whether or not the belt buckle, to your knowledge, was adorned or embellished by anything. A. It had a diamond in it and some kind of an emblem.

Q. Was the emblem made out by diamonds?

A. That I would not know.

Q. Was Ryan present when this went on? A. Yes, sir.

Q. Ryan is the agent who just preceded you on the stand? A. Yes, sir.

Q. How much cash did you first see? A. I saw several bundles of cash.

Q. Was the defendant Mendy Weiss taken through some kind of a machine? A. We do that, yes, sir.

Q. Is that what discloses the presence of metal? A. Weapons.

Q. When he was taken back from the machine did you see the amount of cash and where it came from? A. He checked the property.

Q. How much cash was there? A. Approximately \$2700.

Q. Do you remember a specific bill, a large bill? A. There was one large bill, a thousand dollar bill.

8116

Thomas J. Winne—For People—Cross

Q. Did you see where the cash came from?

A. No, sir.

Q. It came from his person, however? A. Yes, sir.

Cross examination by Mr. Talley:

Q. Is your name Westpaul? A. Wynne.

Q. You are a prison keeper over there in the Federal Detention Pen? A. Yes, sir.

8117 Q. Since April 6, 1941, have you been continuously employed in this Federal Detention Prison on West Street? A. Yes, sir.

Q. You know that the defendant Weiss has been kept there in custody since that time up to the present day, don't you? A. Yes, sir.

Mr. Barshay: I move to strike out this man's testimony on the grounds heretofore urged, not binding upon the defendant Buchalter.

The Court: The same ruling.

Mr. Barshay: Exception.

8118

Mr. Rosenthal: I renew my motion, your Honor. Will your Honor make the same ruling?

The Court: Yes.

Mr. Rosenthal: Exception.

Mr. Turkus: The People of the State of New York rest.

The Court: I will take the defense of the defendant Buchalter first. The defense will be taken up in the order in which the names appear on the indictment.

Mr. Rosenthal: There are motions to be made first, I understand.

The Court: The motions will be made in the same order.

Mr. Talley: I am not going to make a motion now. I want to call your Honor's attention to the fact, on behalf of the defendant Weiss, that certain D.D. four forms used by the Police Department were asked for. My understanding is that your Honor directed that they be produced. I would like before the People rest entirely to get a report as to whether we are to have them here.

8120

The Court: I am trying to recall. Are they under subpoena?

Mr. Talley: Yes, sir.

Mr. Turkus: Your Honor had an extended discussion on the D.D. fours. At the time there was a hectic discussion in the absence of the jury. There was no ruling made, as Judge Talley said.

The Court: I am under the impression that from time to time during the trial—I am trying to recall—different counsel got a number of subpoenas duces tecum, and that those included the D.D. 4. Am I right?

8121

Mr. Talley: You are right, Judge. I want them produced, so your Honor can examine them, if you will not turn them over to us. We would like you to examine them with regard to our contention that there are certain inconsistencies therein set forth with certain testimony given on the trial. If you find those inconsisten-

8122

Colloquy

cies, I assume your Honor will regard it as your duty to turn them over to us.

The Court: Mr. Turkus, have you them?

Mr. Turkus: Yes (producing papers to Court).

May I say this— These are D.D. 4's and 5's in the Rosen case, marked People's Exhibit Z-19 for identification, which are handed to the Court for inspection.

8123

The Court: Isn't this part of the defendants' case, properly?

Mr. Turkus: It is.

Mr. Talley: It is for an examination of one of the People's witnesses, whom I want to recall if the information is in those forms, or any of them, which I expect will be there.

The Court: You mean what witness?

Mr. Talley: Mrs. Rosen is the witness.

The Court: Are these all D.D. 4's and D.D. 5's in the Rosen case, all of them?

8124

Mr. Turkus: Yes.

The Court: What particular point in the testimony of Mrs. Rosen are you seeking to contradict?

Mr. Talley: The description she gave of the defendant Weiss, the man whom she said fit Weiss's description, the man who was in the shop the night before the killing.

The Court: The first thing I pick up has no relation whatever. I cannot wade through all these papers. They will have to be sorted out and the particular D.D.

4's which have reference to the description given by Mrs. Rosen will have to be shown to the Court. I am not supposed to search to the bottom of a barrel to find a piece of china.

Mr. Talley: Will your Honor permit counsel for the defendants, or one of them, to go over the papers?

The Court: I am addressing Mr. Turkus. I am not going to search through this bunch of papers for a needle in a haystack. Mr. Turkus can hand me the proper paper in which the description given by Mrs. Rosen is stated.

8126

Mr. Turkus: I will have to wade through them too.

The Court: Then I will take the defense, and check this up later. In the meantime I will instruct that Mr. Turkus, after hours, go through all these papers and find the description in the D.D. 4 given by Mrs. Rosen of the person who came in to buy the one cigarette and made a couple of trips—I think that is what she said.

8127

Mr. Rosenthal: There was one other thing which your Honor directed the District Attorney to let you know this morning, as to whether or not, in respect to the witness Magoon, who claims he had been asked questions, given answers, and signed them—whether that statement exists in the District Attorney's office, and if so it was to be produced, and I was to be given an opportunity to further examine Mr. Magoon.

8128

Colloquy

Mr. Turkus: That was delegated to Assistant District Attorney Klein, who can respond.

Mr. Klein: I made a complete search and check-up of the statements made. I repeat that there is no such statement in the Rosen case.

The Court: The jury will be excused for the motions.

(The jury then left the court-room.)

8129

Mr. Turkus: Your Honor, now that the jury has left the room I want the record to show that during the voir dire examination of the jury, each and every juror, including both alternates, were apprised by counsel for the defendant Lepke of prior convictions of that defendant and his incarceration for a term of approximately 44 to 70 years in jail as a result thereof. The record should show that without the recourse of going through the entire voir dire examination of each and every juror.

8130

The Court: That was discussed freely from the very start of the selection of the jury, and, as you said, in the questioning of talesman by the defense counsel.

Mr. Turkus: That is right. I want the record to properly reflect that.

Mr. Climenko: I will move to strike out first, before I make my motion.

Your Honor, on behalf of the defendant Buchalter, I move to strike from the record all of the testimony of the witness Maguire, on the ground that it is not bind-

ing on the defendant Buchalter by reason of the fact there is no proof that the witness Rubin was induced to flee the jurisdiction for fear that he might become a witness in this case.

The Court: We are up against a practical proposition here. In order to form any impression as to the manner in which details of testimony apply to one rather than against all, or rather than against the others, it will be necessary for the Court to make a minute and detailed study and review of the entire evidence for the People. It is not practical to make intelligent rulings on motions of this kind at this time. That can wait until the charge to the jury. Counsel knows this as well as the Court does.

8132

Mr. Climenko: With that understanding, we will be very glad to reserve these motions until the close of the entire case.

The Court: Then there may be some question about the form of the motion. I don't think it is properly a motion to strike out as against one or two, but rather an application to charge the jury as to whether or not certain parts of the testimony fail to connect one or two of the defendants.

8133

Mr. Climenko: I think that comment does apply to a good many of these matters.

The Court: It is like the piecing together of the parts of a watch—in fact, it is a jigsaw puzzle.

8134

Motions to Dismiss Indictment

Mr. Climenko: We have nothing further to say at this time. We will be glad to do so.

The Court: Supposing we make a blanket rule now that the Court is not in a position to make any ruling at this time to strike out any evidence or declare its applicability as to any individual defendant or defendants. That will be taken up later when the Court is preparing its charge to the jury.

8135

Mr. Climenko: It is our right to make a motion.

The Court: Your rights will be preserved.

Mr. Climenko: We have no objection to that procedure.

8136

On behalf of the defendant Buchalter we now move to dismiss the indictment upon the ground there has been failure on the part of the People to prove the commission of the crime alleged as against him. We also move at this time to dismiss the indictment as against him upon the ground there has been a failure of proof of guilt beyond a reasonable doubt.

The Court: Motion denied.

Mr. Climenko: And at this time, on behalf of the defendant Buchalter, we move for the direction of a verdict of acquittal upon the ground that there has been a failure of proof of guilt beyond a reasonable doubt, as a matter of law.

The Court: Motions denied.

Mr. Climenko: Exception to the denials.

Motions to Dismiss Indictment

8137

The Court: Motion on behalf of Weiss?

Mr. Talley: I make the same motions on behalf of the defendant Weiss as were made on behalf of the defendant Buchalter. I make the further statement that I renew all motions made during the course of the trial to strike out the various portions of the testimony which we claim should have been stricken out as not applicable to the defendant Weiss and not having any bearing on matters herein named in the indictment. We make the same motion on behalf of the defendant Weiss as was made on behalf of the defendant Buchalter.

8138

The Court: On all except the last-mentioned motion, the motions are denied. On the last motion, I do not recall at this time whether or not, in any detail of the evidence, anything was taken subject to connection without being later connected. I think not. So I will deny the motion. If you find there is any such item of evidence, you may later renew that motion.

8139

Mr. Talley: I make a further motion to dismiss the indictment and for the discharge of the defendant Weiss upon the ground there is no credible evidence adduced on behalf of The People against the defendant Weiss except what comes out of the mouths of admitted and acknowledged accomplices to the crime; and there is no independent evidence other than the testimony of accomplices that in any way tends to connect the defendant Weiss with the commission of the crime named in the indictment.

8140

Motions to Dismiss Indictment

The Court: Motion denied.

Mr. Talley: Exception to the denial of all of my motions and each of them.

Mr. Climenko: May the record show, on behalf of the defendant Buchalter, that I move similarly to dismiss the indictment upon the ground that the only testimony adduced against him was testimony of alleged accomplices.

The Court: Motion denied.

8141

Mr. Climenko: Exception.

Mr. Rosenthal: On behalf of the defendant Capone at this time I move to dismiss the indictment and for the direction of a verdict of acquittal upon the ground that The People have failed to prove sufficient facts against the said defendant to warrant the submission of the case to the jury; and upon the ground that the proof is insufficient as a matter of law, in view of the fact that the only testimony in this case in so far as that defendant is concerned, is that of the witnesses Bernstein, Berger, Rubin, Tannenbaum, and Magoon, and that the testimony of Bernstein is that of an accomplice as a matter of law; that the testimony of the witness Tannenbaum relates to the knowledge of the defendant two years subsequent to the alleged killing; that the testimony of the witness Rubin is that he merely saw the defendant on two occasions, the last being in the fall of 1935, one year before the killing. The testimony of the witness Berger is simply to the effect that on one occasion

8142

Motions to Dismiss Indictment

8143

he saw him in company of the co-defendant Weiss; that Magoon's testimony, which seeks to be independent testimony, is insufficient as a matter of law to supply the type of independent evidence required by law to warrant submission of the case, in so far as the defendant Capone is concerned, to the jury as a matter of law.

The Court: Motion denied.

Mr. Rosenthal: Exception.

At this time, in view of the fact there have been some thirty-odd witnesses, of which only the number mentioned above related to the defendant Capone—in view of the fact there have been fifty-six exhibits, none of which in fact relate to the defendant Capone, and the volumes of testimony that has been adduced here that has been prejudicial to the rights and interests of that particular defendant, I again renew my motion which was made prior to this trial, for a severance. I again renew my motion for a mistrial and the withdrawal of a juror and for a severance upon the grounds heretofore mentioned by me.

8144

The Court: Denied.

Mr. Rosenthal: Exception.

(The jury then returned to the Courtroom.)

8145

The Court: I will take the defense of the defendant Buchalter.

8146

John J. Fegan—For Defts.—Direct

JOHN J. FEGAN, residing at 5503 Thirty-first Avenue, Woodside, Borough of Queens, City and State of New York, called as a witness in behalf of the defendant Buchalter, after being duly sworn, testified as follows:

Direct examination by Mr. Climenko:

Q. By whom are you employed? A. The New York Telephone Company.

8147 Q. For how long have you been so employed?
A. Over 35 years.

Q. Did you appear here today pursuant to subpoena duces tecum which was served upon your employer? A. Yes, sir.

Q. Does that subpoena call for the production of such records as may be in the possession of your employer with respect to facilities rented to the New York & New Jersey Clothing Trucking Corporation? A. Yes, sir.

8148 Q. And in pursuance of that subpoena, have you produced certain records here? A. I have some index cards. That is about the only records we were able to find that are available.

Q. May I have them? A. (Witness hands counsel papers.)

Mr. Climenko: May the two cards now produced by the witness be marked temporarily for identification?

(Received and marked Defendants' Exhibits Z and Z-1 for identification.)

Q. Now, did you, pursuant to that subpoena, look for any other record with respect to the

John J. Fegan—For Defts.—Direct

8149

account of the New York & New Jersey Clothing Transportation Company with your employer, the New York Telephone Company? A. A complete check was made by the office.

Q. Were any other records found than these?
A. None.

Q. In the regular course of business of the New York Telephone Company are index cards such as the ones which have now been marked for identification, as Defendants' Exhibits Z and Z-1 for identification—are they regularly made and filed with respect to certain types of accounts? A. They are.

8150

Q. What types of accounts? A. Where there are some outstanding charges due to the company.

Q. Are those kept in the regular course of business? A. They are.

Mr. Climenko: I now offer them in evidence.

Mr. Turkus: I object. The proper foundation has not been laid for the receipt of these exhibits. Defendants' Z and Z-1 for identification.

8151

The Court: Will you be more specific in your objection?

Mr. Turkus: Will your Honor look at them? I say there has been no proper foundation laid, that this witness has no knowledge of any of the contents of the alleged record cards; they do not disclose he personally made them up or what relevancy they have to the issue.

8152

John J. Fegan—For Defts.—Direct

The Court: I assume this has to do, Mr. Climenko, with the testimony of the decedent's daughter.

Mr. Climenko: Yes, your Honor.

The Court: Mr. Climenko, let me ask you first about this SPring 7-0123. Do you know what I mean?

Mr. Climenko: Yes.

The Court: Do you mind telling me what this applies to?

8153

Mr. Climenko: I know only that which I have learned from the witness. Apparently it was what is known as a pay box telephone which had been subscribed for by that corporation, and the service at that pay box was discontinued by reason of the failure of the corporation to pay its obligation thereunder, and the regular telephone service was suspended by reason of default in payment of a larger obligation.

The Court: There is very little here on that. I don't see that.

8154

Mr. Climenko: But the witness can tell you, I think, by reason of his acquaintance with custom or bookkeeping traditions of the business, that there are symbols on that card which indicate to him, though they would not to you or me, the type of service there was. There are a series of identical digits there which have some significance to him or anybody as well versed as he is with the bookkeeping habits of the company.

The Court: Can you tell me what the number 2 9317 means?

John J. Fegan—For Defts.—Direct

8155

Mr. Climenko: I have made no inquiry about that, but I assume it is the subscriber's telephone number.

The Court: There is nothing on the face of these cards which, so far as I can see now, in any way contradicts anything testified to by that witness.

Mr. Climenko: Perhaps I can lay the foundation.

The Court: Offer them later, if they are connected up.

8156

Mr. Climenko: If your Honor pleases, may I recall to your Honor's attention at this moment—if I am wrong in my assumption as to what is in your Honor's mind—that there is a direct issue apparently created by the testimony of one witness as to the condition of this business in April of 1932, and this proof goes to that issue. I said one witness; there were two.

The Court: There is nothing on the face of the card to indicate it.

Mr. Climenko: The face of the card, I think, does indicate it, but I think I will proceed to inquire of the witness, if your Honor pleases, and then perhaps your Honor's feeling about it may change.

8157

The Court: Go ahead.

By Mr. Climenko:

Q. Now, in the regular course of business of the Telephone Company, Mr. Fegan, assume that a subscriber, at the end of a month or whenever a bill is payable, fails to pay his bill, what happens?

8158

John J. Fegan—For Defts.—Direct

Mr. Turkus: I object to it.
The Court: Overruled.

By the Court:

Q. How long do you wait for your money before shutting off service? A. It all depends, your Honor, upon the credit of the account. Usually 30 days, sometimes sooner, sometimes a little later.

8159

Q. The middle of the month is the usual time, isn't it? A. Yes, sir.

Q. Not 30 days? A. Sometimes we go that long, depending upon circumstances.

By Mr. Climenko:

8160

Q. Mr. Fegan, will you try to talk so we can hear you back here? Mr. Fegan, assume that an account has its service cancelled, you cancelled the service because of non-payment of a bill; in that event are cards made, customarily, such as these cards which are now marked Defendants' Exhibits Z and Z-1 for identification? A. Yes, sir.

Q. At the same time, are the regular records with respect to that account retained or preserved for a certain period of time? A. They are.

Q. And regularly, in the regular course of business for your employer, for how long a period? A. Usually six years.

Q. At the end of six years, what happens to the other records with respect to that account where service has been discontinued by reason

John J. Fegan—For Defts.—Direct

8161

of default in payment for service? A. Usually destroyed.

Q. At the same time when service is discontinued and these cards are made, what is done with these cards? A. They are used for checking purposes in the event that the customer applies for telephone service again.

Q. In other words, counterparts of these cards are referred to various parts of your employer? A. We retain them. All is checked through our office for checking.

8162

Q. At the present time or as of the time when that subpoena was served on the New York Telephone Company, were there any records in existence with respect to the account of the New York & New Jersey Clothing Transportation Company with the Telephone Company other than these cards? A. No, sir.

Q. These were the only records? A. That is right.

Q. And the other records had been destroyed in accordance with the bookkeeping practice of your company; is that correct?

8163

Mr. Turkus: I object to it. He has no knowledge of it. He says they are usually destroyed.

By the Court:

Q. What is your job there? A. I am a representative.

Q. That does not mean anything.

Mr. Climenko: I withdraw the question.

8164

John J. Fegan—For Defts.—Direct

Q. That is too indefinite. What do you do? Are you a bookkeeper? A. No, sir, outside representative.

Q. Do you keep the records? A. No, I interview customers; assigned to detailed inside work occasionally.

Q. Do you have anything to do with the bookkeeping system? A. No, sir.

By Mr. Climenko:

8165

Q. Do you have to do occasionally with the collection of delinquent accounts? A. I do.

Q. In the past four years has it been your job to work with the house attorneys for the Telephone Company? A. Correct.

Q. Have you had other occasion to look for records or discontinued accounts? A. That is right, sir.

Q. Before that, were you for about 35 years working directly with the Telephone Company? A. Yes, sir.

8166

Q. Are these records, Z and Z-1 for identification, records of the discontinuance of service by the Telephone Company, of facilities theretofore rendered to New York & New Jersey Clothing Transportation Company? A. They are.

Q. And do these records show the state of the account as of the time when service was discontinued?

Mr. Turkus: I object to it. That is something he would not know.

The Court: He is not qualified. Sustained.

John J. Fegan—For Defts.—Direct

8167

Q. Is this the only type of record, referring now to Defendants' Exhibits Z and Z-1 for identification, retained by your company with respect to any delinquent accounts—

Mr. Turkus: That is already answered.

Q. —for a period of more than six years after the delinquency occurred?

Mr. Turkus: Objected to as already answered.

8168

The Court: That is what he said.

Mr. Climenko: If your Honor pleases, I now make a re-offer into evidence of these cards, because it now appears that these are records with respect to the status of that account.

Mr. Turkus: The objection is renewed that no proper foundation has been laid for the receipt of the instruments, and, further, no relevancy to the issue.

The Court: He is not qualified on that. Sustained.

8169

Q. Are these records, Z and Z-1 for identification, kept in the regular course of business by your company? A. They are.

The Court: You see, Counsellor, now "in the regular course of business," if there was anything on them to say that the account was discontinued, that would be different, but there is nothing whatever to say that service was discontinued.

Mr. Climenko: If your Honor pleases,

8170

John J. Fegan—For Defts.—Direct

may I invite your Honor's attention to the matter and data set forth on the 4th line of each of these cards?

The Court: I will look at it again. I have studied it carefully. Oh, I beg your pardon. Counsellor, I did not notice that. That is further over on the line and in fine print.

8171

Mr. Climenko: If your Honor pleases, in view of the witness's statement as to the conduct and the habits of the Company as to the keeping of records, the fact that these are the only records that exist, the character of the records themselves, I re-offer them in evidence at this time.

Mr. Turkus: I object now on the ground of relevancy.

Mr. Climenko: If that be the point of objection, will your Honor hear me on that?

8172

The Court: Yes, on the ground it is conjecture, because anybody can have the telephone service shut off due to neglect of payment, and furthermore, the cards don't show that the service was actually cut off. It does not state in that fine print whether that is a proviso or an accomplishment, whether the term was in future or whether in the past tense.

Mr. Climenko: Will your Honor take it subject to connection?

The Court: Maybe you have had your telephone cut off at some time because you have been too busy to send a check.

John J. Fegan—For Defts.—Direct

8173

Mr. Climenko: Will your Honor take it subject to connection?

The Court: You can mark them for identification, but I cannot let them be received as evidence on the ground that it is conjectural and it does not contradict anything testified to by Rosen's daughter.

Mr. Climenko: May I have an exception, your Honor?

The Court: Yes.

8174

By Mr. Climenko:

Q. Do you know from the records of your company—

The Court: Except this. Pardon me. This comes to mind: that she testified that in the early summer of 1932 came this alleged conference off of Broadway in which the books were thumbed over and there was a discussion and she was told to go out. She said from that time on the business went down and her father left about three months later. The card has relation to that, but is corroborative rather than contradictory.

8175

Mr. Climenko: On the contrary, your Honor, it shows there was no telephone service then existing at the time, and it was her testimony that her father did telephone to her at the place of business.

The Court: That does not show it.

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You can cut off service and restore it the next day.

Mr. Climenko: All things are possible. This shows that the service was cut off.

The Court: Maybe for an hour, maybe for a minute, maybe for a week. You do not know how long.

By Mr. Climenko:

8177

Q. Did you look for all the records of your Company with the New York & New Jersey Clothing Transportation Company, Inc.? A. The check was made, not by me personally.

Q. Were there any records in existence other than these cards Z and Z-1 for identification?

Mr. Turkus: He cannot answer that, because he did not make the check.

The Court: Sustained.

8178

Q. All right. Who makes the check, Mr. Fegan? Do you know his name? A. Usually delegated to some employee in the office.

Q. Do you know the name? A. Could be delegated to two or three.

Q. Could you give us the names of the persons who actually made the check in this instance? A. I could not.

Q. I mean the two or three who might have. A. No, I cannot say who made the check in this particular case.

Q. Could you find that out for us? A. I could.

Q. I mean after you leave here? A. I could.

By the Court:

Q. Will you let Mr. Climenko know? A. Yes, sir.

Q. Because he wants to get the right one here to testify. A. I will be glad to.

By Mr. Climenko:

Q. Is it the custom, after a service has been reconnected or reestablished, to make a note of that fact in the records of your company? A. On those records that you have?

8180

Q. On any records. A. Where there is a very definite record indicating that the customer did have service at one time.

Q. Is there any record in the possession of your company to the effect that this company, the New York & New Jersey Clothing Transportation Company, at 2 Washington Place, had telephone service after April 3, 1932?

Mr. Turkus: Object to it. He has already testified these are the only two records he knows of.

8181

The Court: He has not qualified as having knowledge of any records. Sustained.

Mr. Climenko: Exception.

The Court: Apparently he is just a messenger, so far as this case is concerned.

Q. Are you presently employed by the house attorneys for the New York Telephone Company? A. Correct.

Q. And is it the business of those attorneys to

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collect delinquent accounts whenever possible?

A. That is right.

Q. Do you know whether the delinquent account of the New York & New Jersey Clothing Transportation Company was ever paid?

Mr. Turkus: I object to it.

The Court: Sustained.

Mr. Climenko: Exception.

8183

Q. Did the attorneys by whom you are employed and for whom you work make effort to obtain collection of delinquency owed by New York & New Jersey Transportation Company?

Mr. Turkus: I object to it.

Q. To the New York Telephone Company, if you know.

Mr. Turkus: I object to it. That takes into evidence something not yet testified to or appearing.

8184

The Court: Yes, he has not shown he is qualified.

Mr. Climenko: I asked him if he knew, your Honor.

The Court: With all the many, many thousands of accounts, millions, how would he remember nine years later—

Mr. Climenko: Well, if he knows. That is the question.

The Court: —have any independent recollection whatsoever about a specific account?

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8185

By the Court:

Q. Do you remember anything about this account? A. I don't your Honor.

Q. Did you ever handle it? A. No, your Honor.

Q. Are you here simply on some cards someone gave you to bring over? A. Yes, your Honor.

Q. No personal knowledge? A. No, sir.

The Court: Apparently you have the wrong witness.

8186

Mr. Climenko: I would like to press it, if I may. Perhaps we can save some time.

By Mr. Climenko:

Q. Who makes out these cards, cards of this character, Defendants' Exhibits Z and Z-1?

Mr. Turkus: I object to it. It makes no difference who makes them out under the circumstances. This witness has no personal knowledge of them.

8187

By the Court:

Q. Do you know who made that one out? Can you tell by the handwriting? A. It is typed, your Honor. I could not tell.

Mr. Climenko: If your Honor pleases, I now propose to show the system.

The Court: Counsellor, don't you see this is a tremendous—

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Mr. Climenko: Your Honor, I don't think under the rules of evidence I have to call all of the specific employees of the Telephone Company and a full accounting staff.

8189

The Court: Don't you realize by this time that the man is simply a messenger so far as these cards are concerned? Somebody said, "Here are two cards. Bring them over." You have the wrong witness. You can no doubt take it up with the Company and have some chance, even at this late date, of finding the right witness.

Mr. Climenko: I have no doubt of that but I thought we might obviate all that by having him tell, if he knows, what the system is. Then the cards may be competent, even though he had nothing to do personally with composing them, if he knows. He has been there a long time. I merely want to spend a couple of minutes.

8190

The Court: Go ahead. See if you can authenticate them.

By Mr. Climenko:

Q. In the ordinary course of business, Mr. Fegan, when are cards of the type of Defendants' Exhibits Z and Z-1 for identification made up by the Telephone Company? A. When the account is cancelled and the bill has not been paid.

Q. And not until then are cards of this type composed; is that correct? A. That is right.

By the Court:

Q. You don't mean "cancelled," do you? You mean temporarily discontinued. A. Terminated, your Honor. That is before the account is actually terminated. There is a time when the service is interrupted for a short period. We don't prepare cards. It is only when an account is actually cancelled.

Q. After this temporary termination of the account? A. That is right.

8192

Q. There is a lapse of time? A. Right, your Honor.

Q. And then if, on the expiration of that other length of time, the account has not yet been paid, then the account is marked "cancelled"? A. Right.

Q. And the cards are filled out and sent to the Collection Department? Is that what these cards are? A. That is right.

Q. Then what happens when the customer pays? A. The cards are removed from the file.

Q. And put where? A. They are put in a file as destroyed within a recent period.

8193

Q. Are the cards then returned from the attorneys' office? A. The collection attorneys' office handles those particular accounts.

Q. Then the collection attorney hands those cards back to the Company? A. We are part of the Company.

Q. I understand that. A. No, we just file the cards, case closed, account paid.

By Mr. Climenko:

Q. In this particular instance these cards were never returned to anybody, were they?

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Mr. Turkus: I object to it. He is a messenger. He does not know the first thing about these cards.

Mr. Climenko: All right, if he knows. He is a little bit more than a messenger.

8195

Mr. Turkus: I do not mean to disparage the man. In this specific case I urge he is nothing more than a messenger who has delivered these cards to the court house. He does not know where they came from, who dug them out, what file they came out of, if they are accurate, or whether they should have been destroyed or not. He knows nothing of the situation.

The Court: Let us find out.

By Mr. Climenko:

Q. Mr. Fegan, may I direct your attention, invite your attention to the fourth line of each card, and call your attention to the fact— (To Mr. Turkus) Would you mind waiting until I get finished?

8196

Mr. Turkus: I will.

Q. I call your attention to the fact that each card has a date on that fourth line on its right hand side and a later date on its left hand side, and is that the way these cards are usually composed, and may I invite your Honor's attention to that?

The Court: Yes.

Mr. Turkus: I object to the question.

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Mr. Climenko: Then I withdraw the question and I submit them to your Honor.

By the Court:

Q. In your precise connection, Mr. Witness, with the telephone company, does the handling of the cards go through you? A. No, your Honor.

Q. Do you have anything to do with it? A. No, your Honor.

Q. Do you go out with these cards and ask anybody for money? A. No, your Honor.

Q. Do you do any of the collecting? A. I do.

Q. Just what part do you do? A. Collect delinquent accounts, but we have other data besides the cards.

Q. You don't have these cards? A. They are on file.

Q. Who makes out those other cards which you speak of that you handle? A. In our efforts to collect the accounts, your Honor.

Q. Yes, when you go out you say you are given some other record? A. We have the customer's signature to the contract for service; we have toll tickets, and other credit information which would assist us in locating the customer.

Q. When you go out to make a dun, is that your job? A. Yes.

Q. You have some sort of a record in your pocket? A. We have.

Q. Who makes that out? A. That is made out by some clerks in the office.

Q. Not made out by you from these cards? A. No.

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The Court: Counsellor, it is quite possible you may be able, with proper authentication to get those in, but inasmuch as the other records have been apparently, if this witness is correct in his conjecture, destroyed, that will still leave open the question as to whether or not service was not restored.

Mr. Climenko: All right, your Honor. Independently—

8201

The Court: But one of these is in the spring and the other one is in the fall. So far as that summer is concerned, that is not covered by these records.

Mr. Climenko: If your Honor pleases, there is a difference in these telephones. One of them is at one address and one is at another address.

The Court: It is the same company. I assume it moved.

Mr. Climenko: There is no proof here of that in this record, your Honor.

8202

The Court: There may not be, but you are offering the records and if the records go in you would have to accept anything that they tended to prove.

Mr. Turkus: Mr. Climenko has urged another ground for objection, too. They don't even show they are the same company or same address. He has just urged that as another ground to disqualify them.

The Court: Greene Street is down around Canal Street. What number is that, Greene Street? If I remember correctly, it is Broadway, Walker, Greene.

Mr. Climenko: I do not know the pre-

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8203

cise location, but that is not the point, your Honor.

The Court: This should be around Canal Street, the other up around Washington Square.

Mr. Climenko: They had another type of service at their office.

The Court: What is that?

Mr. Climenko: They had one type of service at a particular place outside of their office and they had another type within their office, and the service within their office was discontinued.

8204

The Court: You better get whoever is an expert in the accounts over there.

Mr. Climenko: I beg pardon?

The Court: You better get somebody who can authenticate the records so that anybody will be able sensibly to do more than conjecture upon reading it.

Mr. Climenko: Will your Honor accept them subject to connection?

The Court: The trouble is you are asking the Court to do this, to put in two cards with all intermediate records admittedly destroyed and have the jury to conjecture that there was no restored service in the interim. Now when the Court calls your attention to two different addresses you say there is proof it is the same.

8205

Mr. Climenko: Your Honor misunderstood me. You are confusing Mr. Turkus' remarks with mine. I realize that there are two different addresses on it and I do

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not say they are two different concerns. I say they are the same concerns with two different types of service, one type at its office and another type at a place outside of its office, and both services were discontinued, the office service on one day and the other service outside of its office at a different day. There is no inconsistency about that at all.

8207

The Court: There is a six months period between.

Mr. Climenko: Quite true and there is certainly also a great disparity in the obligation on the account.

The Court: What is the question before the Court now?

Mr. Climenko: I would like your Honor to permit me to ask one question of this witness in respect to one of these cards.

The Court: Go ahead.

By Mr. Climenko:

8208

Q. Mr. Fegan, I show you Defendants' Exhibit Z-1 for identification. Can you tell me by inspecting any of the symbols on that card the type of service called for by the subscriber with respect to the telephone at the address set forth on that card?

Mr. Turkus: I object to it. There is no time fixed. There is no relevancy shown.

Mr. Climenko: It is merely to qualify a matter mentioned by your Honor.

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The Court: I will have to sustain the objection upon the ground he is not qualified to state.

Mr. Climenko: Let me ask him then, your Honor—

Q. Mr. Fegan, there are certain symbols underneath a telephone number on the upper right-hand corner of that card, is that right? A. Correct.

Q. Do you know what those symbols mean? 8210
A. I do.

Q. What do they mean?

Mr. Turkus: I object to him reading from a card not in evidence.

Mr. Climenko: He is not reading anything. Your Honor can see he is not reading. I am asking him as to the meaning of four symbols on that card.

Mr. Turkus: I object to it. The card is not in evidence. Its relevancy has not been shown. It is a card which, from the examination of this witness, he received together with a subpoena and has brought over here merely as a manual messenger. He has nothing to do in the course of business with those cards; he knows nothing of the accuracy of the statements thereon; he does not even know what file they came out of.

8211

By the Court:

Q. Mr. Witness, quite apart from whether you

8212

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know about the card or not, are you familiar in the course of your business with those symbols?
A. I am.

Q. What do those ciphers mean? A. Indicates a semi public telephone.

Q. You mean it is a slot machine? A. That is right.

By Mr. Climenko:

8213

Q. That was a coin box? A. That is right.

Q. And that was rented by that corporation, is that so?

Mr. Turkus: I object to this. That is by indirection reading this alleged card which is not in evidence, and the further ground if your Honor will examine the data and the address on that card you will see the other ground of objection and irrelevancy. There is no such address appearing in the entire testimony in the case.

8214

The Court: Let me see it again. You mean 266 Greene Street?

Mr. Climenko: That is right.

Mr. Turkus: In that November, 1932, after the stoppage, it is irrelevant, it is incompetent, has no place in this case.

The Court: That, according to the lady's testimony, would be after her father had left the concern. Sustained.

Mr. Climenko: I withdraw my offer with respect to that at this moment but at this time I again offer in evidence the card, Exhibit Z for identification.

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8215

Mr. Turkus: I object to it on the ground previously urged and on the further ground of irrelevancy.

The Court: Sustained.

Mr. Climenko: Exception.

By Mr. Climenko:

Q. Can you have here, Mr. Fegan, the man who kept this record or from whom you got it?

A. I will.

8216

Q. And who knew about retaining it in the files of your company? A. Yes, sir.

Q. And who also is acquainted with the system employed in the composition of these cards?

Mr. Turkus: I object to this. He does not know that. He does not know if any such man is alive.

The Court: He can try to find out.

Mr. Turkus: Certainly, that is all he can do.

The Court: Anything else?

Mr. Climenko: That is all from this witness at this time, your Honor.

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8218

Henry H. Eisenberg—For Defts.—Direct

HENRY H. EISENBERG, residing at 152 Bellevue Street, Elizabeth, New Jersey, called as a witness on behalf of the defendant Buchalter, and being first duly sworn, testified as follows:

Direct examination by Mr. Climenko:

Q. Mr. Eisenberg, are you an attorney? A. I am.

8219

Q. Admitted to practice in what state? A. New Jersey.

Q. How long have you been a lawyer? A. Twenty years.

Q. Do you know a man by the name of Martin F. Kelly? A. I do.

Q. And had you known him for some time in or about the year 1931? A. I did.

Q. And had you on occasion represented him before that time? A. I did.

Q. In or about the year 1931 did you meet one Joseph Rosen? A. I did.

8220

Q. And were you introduced to him by your client, Martin F. Kelly? A. Yes, sir.

Q. In or about the spring of 1931 did you draw a contract between Martin F. Kelly, his wife, Joseph Rosen, and his wife? A. I did.

Q. And pursuant to that contract did you also draw a certificate of incorporation? A. I did.

Q. For a company to be known as the K. & R. Trucking Company, Incorporated? A. I did.

Q. Would you say that happened in or about the month of March, 1931? A. That is right.

Q. And pursuant to that contract did Rosen and Kelly agree to enter into business together in the trucking business? A. They did.

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8221

Mr. Turkus: I object to this. That is not the best evidence.

The Court: Sustained.

Q. Did you, at my request, today produce certain papers? A. I did.

Q. After that contract had been drawn in April, 1931, have you any recollection—I withdraw that.

Q. Have you any recollection as to whether that particular contract was signed? A. That was not signed.

8222

Q. Have you any recollection as to whether or not the certificate of incorporation for the company to be known as the K. & R. Trucking Company, Incorporated, was ever filed? A. It was not.

Q. Were the fees for the incorporation of that company paid?

Mr. Turkus: I object to this. This is totally incompetent, irrelevant, immaterial.

The Court: Sustained.

Mr. Turkus: Having nothing to do with the issue.

8223

Mr. Climenko: Exception.

Q. Subsequent to the spring, or April, of 1931, did you again meet Joe Rosen and Martin Kelly at your office? A. I did.

Q. At that time did they have a discussion with you?

Mr. Turkus: I object to it.

The Court: Yes or no? Overruled.

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A. They had several discussions after that time.

Q. At that particular time, in or about the month of October, 1931, did they have a discussion with you? A. They did.

Q. At that discussion was Joe Rosen represented by his lawyer, Mr. Burr, of the firm of Spindel & Burr of Passaic, New Jersey? A. I have the notation on the paper.

8225

Q. I show you a paper writing and ask you if that refreshes your recollection with respect to the question I now ask you (handing paper to witness). A. Yes, sir; Mr. Burr, of the firm of Spindel & Burr, represented Mr. Rosen.

Q. At that time, in October of 1931, was there a discussion between Rosen & Kelly with respect to the earlier agreement of April, 1931?

Mr. Turkus: Objected to. It is incompetent, irrelevant, immaterial.

The Court: When was this?

The Witness: October, 1931.

8226

The Court: You realize when these questions were asked under cross-examination, the Court has to go back over a great mass of detail to determine whether or not they are relevant. That takes a moment or so. Sustained.

Mr. Climenko: Exception.

Q. In or about the month of October, 1931, did Rosen and Kelly enter into an arrangement to go into business with persons by the name of Bluestein and Sobler? A. They did.

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Q. Before they did that, did they have a discussion in your office about those arrangements?

Mr. Turkus: I object to it as incompetent, irrelevant, immaterial.

The Court: Yes or no.

A. I don't recall.

Q. I show you these two papers and ask you whether they refresh your recollection as to whether such discussions were had in your office.

8228

The Court: What are those, the certificates of incorporation, Counsellor?

Mr. Climenko: No, sir, those are agreements that I handed him at this moment.

The Court: Partnership?

Mr. Climenko: Well, not precisely, but for the association. They are really incorporation contracts.

A. Yes, sir, they did have a consultation in the office.

Q. I beg pardon? A. They did have a conference in the office.

8229

Q. They did? A. That is right.

Q. Mr. Rosen and Mr. Kelly? A. Mr. Rosen and Mr. Kelly.

Q. In that discussion was there talk about the K. & R. Corporation, the certificate of incorporation which you had drawn in April, 1931?

Mr. Turkus: I object to it, incompetent, irrelevant, immaterial; certainly not the best evidence, there having been exhibited to the witness certain documents which

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speak for themselves. So on both grounds I urge its inadmissibility.

The Court: I do not know what this is. Let us have it. Overruled.

(Pending question read.)

A. There was.

8231

Q. And was there reference to the fact that that corporation had not been incorporated by reason of the default of Rosen in failing to pay a part or all of the incorporation expense, as he had earlier agreed to do?

Mr. Turkus: Objected to as incompetent, irrelevant, immaterial.

The Court: Sustained.

Mr. Climenko: Exception.

8232

Q. Did you, as a matter of fact, refrain from filing the certificate of incorporation of that proposed corporation, K. & R. Trucking Corporation, by reason of that default on the part of Joseph Rosen?

Mr. Turkus: Same objection.

The Court: Sustained.

Mr. Climenko: Exception.

The Court: Of course, you know, Mr. Climenko, the difficulty in your task is appreciated, but what the Court has in mind, so you will know, possibly, what is behind the ruling, is this: that the testimony of the daughter related to the summer of 1932, the alleged conference, and that at that time the business apparently may have been on a paying basis. There was

some attempt made to cut off some of the accounts. That conference, of course, is relevant on the issues brought up by this indictment. Then Harold Rosen, the brother, testified to having been taken in 1932 to a meeting at the Broadway Central Hotel, having looked through the window into the lobby and having seen certain gestures. That is not 1931. Then he went on and told about six months later—this would place the Broadway Central meeting sometime in the spring, because he said six months later the father went out of business. Then he goes on and tells about his father's subsequent employment. I think this is too remote.

8234

Mr. Climenko: If your Honor pleases, may I address myself to your Honor's suggestion?

The Court: Yes, because, granting that there were difficulties in 1931, granting that there were all kinds of details and difficulties, they are only remotely related to the condition in 1931. By "difficulties," I mean arguments. There may be a difficulty on the part of Rosen not putting up the required capital. Many such difficulties at the beginning of a business are easily overcome, and if I admit this evidence, remote as it is, it drives the jury into a conjecture as to how it is related to a condition in the summer of 1932 or in the spring of 1932.

8235

Mr. Climenko: I respectfully suggest to your Honor that your Honor has mis-

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construed the possible effect of the proof which I am about to offer. It has nothing to do with anything except the history immediately preceding the spring of 1932, and I will get to that in a moment, but I cannot do more than ask one question at a time.

The Court: Go ahead then.

8237

Mr. Climenko: I merely want to show the antecedents and origin of this business, and I then want to show, as fast as I can talk, the condition of it in the spring of '32.

The Court: The Court is not crowding you. Having to sustain so many objections is disagreeable to me, and I don't want you to be embarrassed by that, because that might interfere with the quality of your work.

Mr. Climenko: Not at all. I am not embarrassed, your Honor. I merely want to go along and prove these facts.

8238

The Court: Go ahead.

Mr. Climenko: All I want to say to your Honor is that I am representing to your Honor that they are relevant—

The Court: Go ahead then.

Mr. Climenko: —to the issues as made by the prosecution.

(Pending question read.)

The Court: I am going to let him answer it because you tell me you are going to lead up to something that means something.

Mr. Turkus: May I say to your Honor,

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if I may respectfully suggest that you press counsel as to the relevancy of the offer of this proof. What is its relevancy in this case?

The Court: Counsel promises to hook it up. I am going to give him a chance.

Mr. Climenko: I have been, as I think your Honor realizes, very careful not to make any specific announcements, but to try to convey my meaning to your Honor without specific statements. I would rather have the witness do that.

8240

A. I cannot be definite about the reason for not filing that certificate at this time. There were several things involved there. That may be one of five or six reasons that it was not filed.

Q. But, in any event, you are definite that in or about October of 1931 there was this discussion at your office? A. That is right.

Q. In which Kelly and Rosen participated, about the proposed association of Kelly and Rosen with Bluestein and Sobler; is that correct? A. That is correct.

8241

Q. At that time did you draw a contract in your office between Kelly and Rosen? A. I did.

Q. And is this that contract (handing paper to witness)? A. It is.

Q. At the time that this contract was signed, Rosen was at your office, represented by Mr. Burr, a lawyer of Passaic; is that correct? A. That is right. I don't know where he is from.

Q. Well, the notation seems to indicate Passaic, but that is not important.

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Mr. Climenko: At this time I offer in evidence the agreement dated October 28, 1931.

Mr. Turkus: I have read this instrument offered in evidence. I cannot see its relevancy. I object to it.

The Court: The objection is sustained at this time, but, as you may be leading up to something—

8243

Mr. Climenko: That is right, your Honor.

The Court: —you may renew your offer later.

Mr. Climenko: At this time may it be marked for identification so the record may be clear?

The Court: Yes.

(Paper marked Defendants' Exhibit Z-1 for identification.)

8244

Q. Now, to your knowledge, Mr. Eisenberg, did Kelly and Rosen become associated with the firm known as the New York & New Jersey Clothing Transportation Company, Inc. in or about October of 1931? A. They did.

Q. And at that time were Kelly and Rosen, and Bluestein and Sobler employed to work for that corporation? A. They were.

Q. Did you again hear from Kelly with respect to the business of the New York & New Jersey Clothing Transportation Company, Inc. in or about April of 1932?

Mr. Turkus: I object to it. It is in-

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competent, irrelevant, immaterial, whether he heard anything from Kelly or not.

The Court: Sustained.

Mr. Climenko: Exception.

Q. In or about the month of April, 1932, did you attend a conference at which the business of New York and New Jersey Clothing Transportation Company, Inc. was discussed?

Mr. Turkus: I object to it, incompetent, irrelevant, immaterial.

8246

The Court: That is April, 1932?

Mr. Climenko: April, 1932.

The Court: He can say yes or no.

A. I did.

Q. Who were present? A. I don't recall.

Q. I beg pardon? A. I don't recall who were present.

Q. Was Mr. Kelly present? A. Mr. Kelly was.

Q. Do you remember whether Mr. Rosen was present? A. I don't recall.

Q. Did that conference take place in the office of a lawyer by the name of Salzman in Passaic, New Jersey? A. We had several conferences there.

8247

Q. Did that conference take place after you, on behalf of Kelly, had started a lawsuit to collect moneys due Kelly from New York & New Jersey Clothing Transportation Company, Inc.?

Mr. Turkus: I object to this. It is incompetent, irrelevant, immaterial. There was a conference without the presence of Rosen. He does not know who was pres-

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ent. Has nothing to do with the issue of the indictment.

The Court: Sustained.

Mr. Climenko: Exception.

Q. Did you on or about the 27th day of April, 1932, institute an action in the Court of Chancery of the State of New Jersey for the appointment of a receiver of the corporation known as New York & New Jersey Clothing Transportation Company, Inc., and did you do that on behalf of your client Martin F. Kelly? A. I did.

8249

Mr. Turkus: Objected to as incompetent, irrelevant, immaterial.

The Court: Sustained.

Mr. Climenko: Exception.

Q. In or about the month of April, 1932, did you sue, on behalf of Kelly, to recover from New York & New Jersey Clothing Transportation Company, Inc., the sum of approximately \$200 owing to Kelly for garage rent for trucks belonging to the corporation?

8250

Mr. Turkus: Same objection.

The Court: Sustained.

Mr. Climenko: Exception.

Q. On or about the 28th day of April, 1932, —I withdraw that.

Q. On or about the 27th day of April, 1932, were you present at a conference attended by Joseph Rosen, Nat Sobler, and Martin Kelly with respect to litigation which you had insti-

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tuted against New York & New Jersey Clothing Transportation Company, Inc.?

Mr. Turkus: Just a minute. Your Honor has sustained the objection to any litigation, and now by indirection you are getting the litigation in that was ordered out by the Court's ruling on this question.

The Court: Bringing Rosen into this conference.

Mr. Turkus: I know, but he is doing it improperly.

8252

The Court: Overruled.

Mr. Climenko: If your Honor pleases, I take exception to these remarks. That was a perfectly proper question, I submit.

The Court: Go ahead.

A. I don't recall.

Q. Will you look at this paper and see if it refreshes your recollection (handing paper to witness)? A. I was present at that conference.

Q. Now, at that conference which was attended by those people, was there a reference made to the lawsuit, the action for the appointment of a receiver, which you had theretofore instituted?

8253

Mr. Turkus: I object. The witness has not testified that those people were there under any conference, and there is a further ground, there is no relevancy to the issue in this indictment.

The Court: Sustained.

8254

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Q. Was the financial condition of the New York & New Jersey Clothing Transportation Company, Inc. discussed on that occasion? A. It was.

Q. Now, what was said with respect to the obligation of that corporation to pay salaries to Kelly at that time?

8255

Mr. Turkus: I object to it. No proof as to who had the conversation or its relevancy to this issue.

The Court: Sustained.

Q. Was there any discussion at that time about whether or not the company was then insolvent?

Mr. Turkus: I object to it on the same ground; no proof as to who had this alleged conversation or its relevancy here to this issue on the indictment.

The Court: Sustained.

Mr. Climenko: Exception.

8256

Q. At the conclusion of this conference was this agreement dated the 27th day of April, 1932, signed by Joseph Rosen, Nat Sobler, Martin Kelly, and by the corporation by one of its officers? A. It was.

Mr. Climenko: I offer that instrument in evidence.

Mr. Turkus: May I see it? I have looked this over, your Honor. The first agreement has an exhibit attached to it. I cannot find any relevancy in this issue,

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8257

and I object to its introduction in evidence as tending to cause confusion.

The Court: Let me see it. It does not appear to be admissible at this time. Mark it for identification. If connected, let it be offered later.

Mr. Climenko: Exception.

(Paper marked Defendants' Exhibit Z-3 for identification.)

8258

Q. Now, Mr. Eisenberg, I show you a paper which is headed with the words "Resolution of the New York & New Jersey Clothing Transportation Company, Inc.," and ask you whether you produced that paper today in this court. A. I did.

Mr. Climenko: I ask that this paper now be marked for identification.

(Paper marked Defendants' Exhibit Z-4 for identification.)

8259

Q. The paper, Defendants' Exhibit Z-4 for identification, bears whose signature, if you know? A. Sobler and Bluestein, I think.

Q. Not Sobler and Rosen? A. Sobler and Rosen, yes.

Q. The authorization set forth in Defendants' Exhibit Z-4 for identification is an authorization, is it not, for the execution by the corporation, New York & New Jersey Clothing Transportation Company, Inc., of the agreement of April 27, 1932, here marked Defendants' Exhibit Z-3 for identification; is that right? A. Yes.

8260

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Mr. Turkus: Objected to. The paper speaks for itself.

The Court: Sustained.

Mr. Climenko: Exception. I now offer in evidence the resolution, Defendants' Exhibit Z-4 for identification.

Mr. Turkus: Objection, on the same ground as the contract.

The Court: Excluded at this time. You may renew the offer later.

8261

Mr. Climenko: Exception.

Q. Mr. Eisenberg, was the contract, which is Defendants' Exhibit Z-3 for identification, a contract which was drawn and signed in settlement of a lawsuit instituted by you on behalf of Kelly to recover moneys due to Kelly from New York & New Jersey Clothing Company, Inc., and so instituted by you on April 21, 1932?

Mr. Turkus: Objection. The instrument speaks for itself.

8262

The Court: Sustained.

Mr. Climenko: Exception.

Q. At the time that the contract Defendants' Exhibit Z-3 for identification was drawn, did Kelly tell you, in Rosen's presence, that the company New York & New Jersey Clothing Transportation Company, Inc. had failed to pay Kelly his salary for more than three months prior to that date?

Mr. Turkus: I object to this by counsel, by an improper question, trying to bring something to the attention of the jury.

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8263

The Court: Sustained.

Mr. Climenko: Exception.

Q. At the conference—

The Court: I don't know if I understand this correctly, but I understood that the testimony of both the son and daughter of the deceased was, as to the former, to show the Broadway Central occurrence, followed by a discontinuance of the father's connection with the business six months later, and the testimony of the latter having to do with the alleged meeting off Broadway in the Washington Square section sometime about the summer of 1932, —I think she said around July, as she recalled, if that means anything,—and as to what occurred in regard to the alleged attempt to throttle certain accounts; from that time the business went down hill, and two or three months later her father severed his connection; but in the direct evidence of both of these witnesses there was no attempt made by the District Attorney to show solvency or to show that the company may not have been milked by salaries which it could not afford to pay because of the business. There was a wide cross-examination permitted, wide latitude on cross-examination, and these things were more or less delved into, but that does not open that subject for discussion.

8264

8265

Mr. Climenko: May I submit to your Honor that on the direct examination of

8266

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the witness, the daughter, there was testimony to the effect that that business was in good, solvent, and improving—progressively improving—condition.

The Court: What witness?

Mr. Climenkō: The daughter.

The Court: On the part of the direct, that it was a solvent business?

8267

Mr. Climenko: Yes, sir, your Honor, and may I call your Honor's attention to this fact, that the son testified that this was a solvent, progressive, and sound business and that it paid his father not only a salary regularly, but in addition to that paid expenses, which he indicated were of a substantial nature. Now, he said that he was working for that concern in the spring of 1932, and this proof is directly to the contrary, and that is why it is submitted, because these papers deal with lawsuits affecting the insolvency of this corporation in April of 1932.

8268

The Court: No, Counsellor, I am quite sure you will find, if you consult the record, that that question was opened up by the defense on cross-examination of those witnesses.

Mr. Climenko: May I ask this of your Honor: Before a final ruling is made on this point, may counsel have an opportunity to indicate to your Honor, by a reference to the record over night, in the morning the specific portions of the record by which we believe that the District Attorney made this proof competent?

The Court: If it is in the direct, you

may call my attention to it. If it is in the cross, then you cannot open the field of litigating the question, because it is purely collateral.

Mr. Climenko: May we submit to your Honor such portions of the record which we deem pertinent and such citations as we may deem pertinent to this issue?

The Court: All right. Then we will have a recess now, and you review that evidence.

8270

Mr. Talley: Will your Honor hear a motion I have to make? I can make it in the absence of the jury.

The Court: Yes, make the motion after the jury is out.

All will remain seated until the jury is out.

Gentlemen of the jury, do not discuss the case, let nobody talk to you about it. Keep your minds open and follow all of the other admonitions heretofore given.

Let the witness and the jury go.

Mr. Climenko: There is something about the witness I want to bring to your Honor's attention.

8271

The Court: Let the jury go out.

(The jury retired from the court-room.)

Mr. Climenko: Your Honor, the witness is a lawyer, as we know, and he has a professional engagement for tomorrow. I want to know whether it is possible for him to return in the morning. He is a New Jersey attorney.

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The Witness: I have made arrangements.

Mr. Climenko: Beyond all that, we don't want to embarrass him.

The Witness: I have made arrangements this afternoon for someone to take over.

8273 Mr. Talley: I ask your Honor to direct the District Attorney to produce in court tomorrow morning Harry Cohen, known as Muggsy Cohen. He is in their custody. You remember he was produced for identification by the witness Bernstein, and he has been in custody, I understand, since, and I ask that he be produced.

The Court: You mean have him in the court-house? All right, have him here where he can be produced.

Mr. Turkus: He will be here all right.

Mr. Climenko: If your Honor please, I have a further request: May all other witnesses presently under subpoena be directed to return tomorrow.

8274 The Court: Yes.

(To clerk) Make the announcement.

Court Clerk: All witnesses in this case under subpoena report here again tomorrow morning at ten o'clock without further notice.

Mr. Turkus: They are out in the hall.

Mr. Barshay: Bring them in.

Mr. Wegman: If they are told the Judge made the announcement, they will be here.

The Court: The defendants are remanded.

(An adjournment was taken to Tuesday, November 18, 1941, at ten o'clock a. m.)

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Brooklyn, N. Y., November 18, 1941.

TRIAL RESUMED

Mr. Climenko: When we recessed last night there was a question as to the contents of the direct examination of the two witnesses, the son and the daughter of Rosen, called by The People. I respectfully invite your Honor's attention to page 256 of the direct examination. My contention, not a contention but simply a statement as to what their testimony was—the young man said that he worked in this business in the spring of 1932; that it was a prosperous business which paid profits in salaries and expenses of those concerned in it, and that those were substantial.

8276

The Court: Will you direct my attention to the specific questions and answers?

Mr. Climenko: The last question on page 255, and the answer at the top of 256, fixing the time with respect to the testimony.

8277

The Court: That is where the witness states that he was employed by his father in business from the summer of 1931 to the spring of 1932?

Mr. Climenko: Yes. So, presumably when he testified he testified with respect to the condition at that time. Now, I invite your Honor to look at the third

8278

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question on page 257, and then at the fourth question.

The Court: The third question: "Were you familiar with the books and records of the company? A. Yes, sir, at that time I was familiar with the books and records of the company.

"Q. Was the business a paying business?"

8279

Then Mr. Barshay objected to it as a conclusion. The objection was overruled and an exception taken.

Mr. Climenko: Mr. Turkus told your Honor yesterday that no such testimony was elicited on direct examination.

The Court: Then comes the answer: "I certainly know; I was bookkeeper there." But he was not pressed for an answer as to whether it was a paying business or not.

8280

Mr. Climenko: With due respect I ask your Honor to look at the following question: "Did the partners, including your father, have a weekly salary? A. Yes, sir, they had a weekly salary."

The Court: Yes, that is on page 257. the same page I am looking at now: "Did the partners, including your father, have a weekly salary? A. Yes, sir, they had a weekly salary."

Mr. Climenko: May I ask your Honor to skip the balance of that page and look at the first question on page 258.

The Court: "In addition to that, were there profits that were distributed?"

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8281

“Mr. Barshay: The same objection.”

Mr. Climenko: The answer, however, came in.

The Court: Do not interrupt. “A. Yes, sir, there were profits; they usually had expense accounts which they took a certain amount during the week, etc. For example, my father had to go to Pennsylvania quite often—” Interruption:

“Mr. Barshay: I object to that as not responsive.” What else is there?

8282

Mr. Climenko: That is enough.

The Court: Is there anything else?

Mr. Climenko: Nothing that I know of now.

The Court: This is in the testimony of Harold Rosen. Is there anything in the direct evidence other than that?

Mr. Climenko: No, sir, nothing that I was able to find last night. In any event, I make no point about that. When the witness was asked these questions on direct examination by the District Attorney he referred to the condition of business in the spring of 1932, and I desire to show by this witness that the condition as spoken of by the witness was not true, that the reverse was the fact, that this was a failing business after the spring of 1932.

8283

The Court: You realize that all of these questions and answers were preliminary to the main testimony of Harold Rosen. They led up to the point of Harold Rosen's testimony, first, on the matter of the al-

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leged meeting in the lobby of the Broadway Central Hotel, secondly, to the alleged visit of his father to Reading, Pennsylvania, a short time before the alleged murder, and his father leaving three days after arrival, upon a telephone message from the witness's sister. It is in the opinion of the Court of no evidentiary value. It was received only because it was in the preliminary stage of the examination of the witness. It adds nothing to the lustre of The People's case to show whether or not the business was solvent at all times—to show whether or not it was paying its debts at all times, and to show whether or not there were profits over and above the alleged drawing of salaries. The essential part of the testimony and the only thing of any evidentiary value—the only thing that has any bearing upon the issue of the matter testified to by Harold and Sylvia concerns the contacts between Rosen and the defendants, and a few matters specifically related by contact, and also to the movements of Rosen up to and including the time of the alleged murder. If the business was in operation in the summer months at the time when the alleged direction was given by one of the defendants regarding certain out-of-town accounts, causing protest to be made, and if, following that protest, the meeting off Broadway and in the Washington Square district, Rosen presently severed his con-

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nection with the company, I don't think it opens the field for exploration by a lot of far-fetched and collateral evidence—I should say involving conjecture largely—as to the precise condition of the business in the spring preceding the alleged examination of the books. Nor does it have any direct bearing or indirect bearing on the meeting in the Broadway Central Hotel, where the conversation was not overheard but was looked at through a window from the street.

8288

Now, I have given this a good deal of thought over night in determining whether or not at this stage you are entitled to transform this into a far-fetched procedure in the nature of a bankruptcy hearing to determine the precise nature of the business and its financial soundness at any and all times during its existence. I am just telling you what is in my mind. You can go ahead with your examination and the Court will rule. I think the record is sufficiently clarified. I am not ruling, but I am telling you something for your own good, for your own guidance, to clarify the record, and it is not going to be turned into a debate. Please ask your questions and the Court will rule.

8289

Mr. Climenko: Now, if your Honor please—

The Court: Are you going to ask questions or not?

Mr. Climenko: First I will take exception.

8290

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The Court: You are entitled to an exception to everything, even if the Court blows its nose; I cannot stop you, but I would request there be no more speeches.

Mr. Climenko: I take an exception on this record—

The Court: You are not going to raise an exception for the benefit of a speech. The jury is excused. See how far you can go when the jury goes out.

8291

(The jury thereupon left the courtroom.)

The Court: Now, go ahead with your speech.

Mr. Climenko: I have no intention of making any speech. I take an exception, however, at this time, in view of your Honor's actions in the presence of the jury. And I want to take exception to the statement that I could take exception to anything the Court did, including the blowing of your Honor's nose. I take exception to that, because it hurts the defense and puts me in a disparaging light, and I submit to your Honor it was not warranted by anything that happened here. All that happened last night was that your Honor said to me, "If you find anything in the record on direct examination as to the condition of that business in April of 1932, as testified to by the People's witnesses, call it to my attention," and I did. As I understood your

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Honor's ruling, your Honor said that in view of your reflection on the matter you no longer think it is material, even if it is in the People's witnesses' direct case. Now, I cannot, if your Honor please, preserve myself against your Honor's remarks, and I mean by that the defendant whom I represent, except by taking exception. Your Honor has made the statement of your change of mind.

The Court: Will you please come to order and sit down? Are you ready to proceed with the trial of the case?

8294

Mr. Climenko: I take exception to your Honor's ruling.

The Court: All right, bring the jury back.

Mr. Climenko: (While jury is at door of court-room) If your Honor please, for the preservation of the record—

The Court: Take the jury back again. There are more speeches. Go on, get it out of your system.

8295

Mr. Climenko: I take exception to that. By virtue of that incident I move for the declaration of a mistrial and the withdrawal of a juror.

The Court: Motion denied. The jury was just starting to come in the room when counsel jumped up with another speech.

Mr. Climenko: May the record show that counsel did not notice it?

The Court: The Court has waited for several minutes for the jury to be brought

8296

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back. Counsel maintained order in the meantime, but started in again just as the jury started to walk in the room. Is it all out of your system now?

Mr. Climenko: I take exception. Of course, I think it was apparent to your Honor that my back was to the door and I did not notice the jury was beginning to come in. I knew nothing about.

8297

The Court: I know nothing about that, but the question is: Are you all through? I will not have the jury brought back until you are.

Mr. Climenko: I am not all through, because I have not started.

The Court: Are you prepared to resume the start of the case?

Mr. Climenko: I am ready at all times. I was ready at the time your Honor dismissed the jury.

The Court: The Court is fully aware of what you are up to.

8298

Mr. Climenko: I take exception to that, because it carries an implication we are up to something improper.

The Court: There is no jury here. The Court is fully aware of what you are up to. You are not going to get the Court to lose poise.

Mr. Climenko: I take an exception to that. Let the record show there is no jury here at this time, but in the presence or in the absence of the jury I have a right to say in this record that the Court's remarks, which reflect upon the integrity

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of my conduct, are unwarranted, and I except for that reason.

The Court: You have your exception. Now sit down. Bring in the jury.

Mr. Wegman: While the jury is still out of the room—this has nothing to do with what has preceded—I just want on the record—I would like to ask the District Attorney to produce and have available here at two o'clock the witnesses Rubin and Tannenbaum—not for questioning, but for the purpose of having them exhibited to witnesses who will take the stand.

8300

The Court: All right.

(The jury then took their seats in the jury box.)

HENRY H. EISENBERG, a witness in behalf of the defendants, resumed the stand and testified further as follows:

8301

Direct examination by Mr. Climenko (continued):

Q. I show you defendants' Exhibit Z-3 for identification and ask you whether the signatures which purport to be those of Joseph Rosen and Nat Sobler were affixed to that agreement in your presence on the date of that contract, in April, 1932. A. I am not sure of that, whether it was in my presence or not. They were affixed that day before—they were affixed in my presence.

8302

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Q. Both of those signatures? A. Yes, sir, both.

Q. And that was on or about the 27th of April, 1932? A. That is right.

Q. Immediately before, or within six days before that date, had you on behalf— Question withdrawn.

Q. Was your client, Martin F. Kelly, in April, 1932, the owner of 25 per cent of the stock of the New York & New Jersey Clothing Transportation Company?

8303

Mr. Turkus: I object.

The Court: It is hearsay. Sustained.

Mr. Turkus: That is one of the main objections. I object to this line, first, on the ground it has no relevancy, and secondly, these are hearsay declarations. If there was any relevancy in the matter of the solvency of the firm, that would have to be done in a regular, legal way, by producing some of the partners, or through some other, regular, legal course, not hearsay declarations made.

8304

The Court: Objection sustained.

Mr. Climenko: Exception.

Q. Now, Mr. Eisenberg, I again show you papers which are marked as Defendants' Exhibit Z-3 for identification and I call your attention to the fact that there are grouped in those papers two agreements, one of April 27, 1932, and an earlier one dated October 28, 1931, between Morris Bluestein and Nathan Sobler and Martin F. Kelly, Inc., and one Joseph Rosen, and I refer your attention to the signatures

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which appear on the last page of that second contract, those of Morris Bluestein, Nat Sobler, Martin F. Kelly, and Joseph Rosen, and I refer your attention also to this signature that appears to be that—below the words “Signed, sealed, and delivered in the presence of,” and your signature, and I ask you whether the signatures of Bluestein, Kelly, Sobler and Rosen were affixed in your presence. A. They were.

Q. Now, is it a fact, to your knowledge, that Martin Kelly then became associated with or connected with the company known as the New York & New Jersey Transportation Company, Inc., as of the date of the signing of that second contract, which was signed in your presence on October 28, 1931?

8306

Mr. Turkus: I object to that as a hearsay declaration.

The Court: Objection sustained.

Mr. Climenko: Exception.

Q. Subsequent to October 28, 1931, and on or about April 21, 1932, did you, at the request of your client, Martin F. Kelly, did you, in the Court of Chancery of the State of New Jersey, attempt to have the company known as the New York & New Jersey Clothing Transportation Company, Inc., declared insolvent and to have the appointment of a receiver?

8307

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant; that is submitting to the jury indirectly an involved question.

The Court: Counsellor, the bringing of

8308

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a lawsuit never proves anybody insolvent.
Objection sustained.

8309

Q. I show you papers, including a petition by Martin F. Kelly, Inc., and an affidavit signed by Martin F. Kelly, on the 21st of April, 1932, in an action entitled "Martin F. Kelly, Inc., a corporation of New York and New Jersey, complainant, and the New York & New Jersey Clothing Transportation Company, Inc., a corporation of New Jersey," and I ask you whether those papers were drawn by you.

The Court: Now, by the method of asking that question the jury has been informed as to the contents of papers not in evidence. Counsel will not do that again.

The Witness: At my direction they were prepared.

Mr. Climenko: I offer that instrument in evidence.

8310

Mr. Turkus: I object to it as incompetent.

The Court: That is for the same reason previously stated. Objection sustained.

Mr. Climenko: Exception. May it now be marked for identification?

(Marked Defendants' Exhibit Z-5 for identification.)

The Court: If there is any decree of any court in bankruptcy, I mean an adjudication in bankruptcy, that will be admitted, but the mere accusation by a

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8311

lawyer or any other person does not amount to anything.

Mr. Climenko: This was Defendants' Exhibit Z-3 for identification.

The Court: I am just telling you something. I just told you something and it does not call for any speech.

Mr. Climenko: I wanted to tell your Honor—

The Court: You made a speech to the jury a minute ago about the nature of a paper that was not in evidence. You took care to do that.

8312

Mr. Climenko: I take an exception.

Q. Now, was this petition, Defendants' Exhibit Z-5 for identification, served on an officer of the New York & New Jersey Transportation Company?

Mr. Turkus: Objected to as incompetent.

The Court: Objection sustained.

Mr. Climenko: Exception.

8313

Mr. Turkus: My further objection is that it would be hearsay unless he personally served the paper.

The Court: That is no way to prove insolvency.

Q. Does that petition— I show you a paper entitled, "In Chancery of New Jersey"—

Mr. Turkus: I object to that.

The Court: The Court has cautioned

8314

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you about that. I will deal with you in a few minutes in the absence of the jury, if you do not lay off that.

Q. (continuing) —and I ask you whether that paper was served by you.

Mr. Turkus: I object to the preamble in the question. It is improperly bringing before the jury matters not in evidence.

8315

The Court: Objection sustained.

Mr. Climenko: Exception.

I ask that the second page so bound in the papers now referred to the witness be marked as an exhibit for identification.

(Received and marked Defendants' Exhibit Z-6 for identification.)

Q. Now, was the paper marked Defendants' Exhibit Z-6 for identification filed?

8316

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection sustained.

Mr. Climenko: Exception.

Q. Now, in or about the 27th day of April, 1932, did you have a conference with Kelly and Rosen and an attorney representing the New York & New Jersey Clothing Transportation Company? A. If that is the date on that agreement, I did have.

Q. In other words, that conference took place on the same day as the date of the agreement.

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8317

Defendants' Exhibit Z-3 for identification; is that correct? A. What is Z-3?

Q. That is a contract dated April 27, 1932.

A. It is.

Q. The conference took place on the same day?

A. Yes, sir.

Q. At that time, in the presence of Rosen and Sobler and Kelly, did you have a discussion with the attorney with respect to the then financial condition of the New York & New Jersey Clothing Transportation?

8318

Mr. Turkus: Objected to as incompetent.

The Court: Objection sustained.

Mr. Climenko: Exception.

Q. Was there a discussion on that occasion of the claim of Kelly against that corporation?

Mr. Turkus: I object on the same ground.

The Court: Objection sustained.

Mr. Turkus: Exception.

8319

Q. Were the claims of Kelly finally adjusted at the conclusion of that conference?

Mr. Turkus: Same objection.

The Court: Objection sustained.

Mr. Climenko: Exception.

Q. At the conclusion of that conference did Kelly withdraw from participation in the New York & New Jersey Clothing Transportation Company?

8320

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Mr. Turkus: I make the same objection, and the further objection that it is not inconsistent. The People's theory is that there were three partners.

The Court: Sustained for many reasons. The conversation is not evidence. So far as proceedings are concerned, the bringing of a lawsuit or even the filing of a petition in bankruptcy, that is, involuntary bankruptcy, the filing of a petition in insolvency proceedings, if not done by the concern itself, is of no more value as evidence than an indictment. It is only an accusation.

8321

Mr. Climenko: Your Honor, I do not—

The Court: Do not argue on that point.

Mr. Climenko: I will take an exception to your Honor's remarks, if I am not permitted to argue.

8322

Q. I refer your attention to the fact that the paper People's Exhibit Z-3 for identification, bears a certain date which is different from the date throughout the agreement bound by cover. Did you notice that?

Mr. Turkus: I object. This paper is not in evidence.

The Court: Objection sustained.

Mr. Climenko: Exception.

Q. Subsequent to the 27th of April, 1932, and on or about June 30, 1932, did you write a registered letter to Salzman & Bunsevitch, of

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689 Main Avenue, Passaic, New Jersey, and is this a copy of that letter? A. It is.

Q. Is the red card on it, which is apparently clipped to it by a paper clipping, the return registration slip you received from the post office for that letter?

Mr. Turkus: I object to that as hearsay; the red card—there is no signature on there identified as being that of the recipient of the alleged letter.

8324

The Court: Objection overruled.

A. It is.

Mr. Climenko: I ask to have it marked for identification.

(Received and marked Defendants' Exhibit Z-7 for identification.)

Q. Was that letter written after something had happened in connection with the matters concerned in the agreement, Defendants' Exhibit Z-3 for identification?

8325

Mr. Turkus: Objected to.

The Court: Objection overruled.

A. It was.

Q. Now, pursuant to arrangements set forth in the agreement between Kelly and the others of the New York & New Jersey Company, in April, 1932, were certain notes given to Kelly by that corporation, the New York & New Jersey Clothing Transportation Company?

8326

Larry H. Cooper—For Defts.—Direct

Mr. Turkus: I object. Your Honor has ruled on the agreement. Now counsel, by question, endeavors to bring to the attention of the jury facts he knows he cannot put in evidence directly.

The Court: Objection sustained.

Mr. Climenko: Exception.

Q. Were those notes paid at their maturity date?

8327

Mr. Turkus: I object.

The Court: That is an improper question. You had no right to ask it.

Mr. Climenko: Exception.

LARRY H. COOPER, residing at 1602 Avenue P, Borough of Brooklyn, City and State of New York, called as a witness in behalf of the defense, after being duly sworn, testified as follows:

8328

Direct examination by Mr. Barshay:

Q. What business are you in? A. Clothing trucking business.

Q. How long have you been in that business?

A. For myself?

Q. Yes. A. I am in it for myself about twenty years.

Q. You are not related to Louis Cooper of the Garfield? A. No, sir.

Q. In no way whatever? A. No, sir.

Q. Merely a similarity of names? A. Yes, sir.

Q. Did you know Joseph Rosen during his lifetime? A. Yes, sir.

Q. Did you employ Joseph Rosen during his lifetime in your trucking business? A. Yes, sir.

Q. When did you employ him? A. About 1935.

Q. Do you know when his employment with you commenced? A. About 1935.

Q. What part of the year? A. I don't remember just about the month.

Q. Was it the early part or the latter part or the middle part? A. Offhand I could not say. 8330

Q. Can you give us your best recollection? A. He worked for me about a year and a half.

Q. From 1935? A. Yes, sir.

Q. In other words, he commenced to work for you in 1935 and he worked for you a year and a half? A. Yes, sir.

Q. At what salary? A. He got the same salary as the other men got that were working for me.

Q. How much? A. \$45.

Q. Did you ever increase his salary? A. Yes, sir, to \$50. 8331

Q. So at the end of this employment, to your knowledge, he received \$50? A. Yes, sir.

Q. What did he do? A. He was a chauffeur.

Q. Driving a truck? A. An all-round man.

Q. A clothing truck? A. Yes, sir.

Q. Did you discharge him? A. I never discharged him or anybody.

Q. Did he quit? A. Yes, sir.

Q. Did you have a talk with him after he quit as to why he quit? A. Yes, sir.

Q. Tell us.

8332

Larry H. Cooper—For Defts.—Direct

Mr. Turkus: I object unless the time and place is fixed.

Mr. Barshay: He said a year and a half after he worked; he began in 1935; he cannot fix the time.

Mr. Turkus: A declaration made after he quit as to why he quit, I object to.

Mr. Barshay: Do you want him to make it before he quits?

8333

Mr. Turkus: I object. There was nothing brought out in the People's case by witnesses as to that. Nobody contended that Larry Cooper fired him. The only testimony about Larry Cooper that the record shows was that he took him on to replace Meyer Cranes, who went with Louis Cooper.

Mr. Barshay: That still doesn't prevent me from putting in my defense.

8334

The Court: There are two Coopers, and it is quite easy to get confused as to the points of evidence relating to each one. You must keep that distinct in order to understand this witness's testimony. Is this the Cooper who is supposed to have discharged Rosen for having stolen baskets?

Mr. Barshay: No, sir, that is an entirely different Cooper. I asked that by the first few questions I put to this man. He is not related nor has he any connection with the other Cooper. The other one is in Passaic, New Jersey. He owned the Garfield, but this man is an individual truckman and works and lives in Brooklyn.

Larry H. Cooper—For Defts.—Direct

8335

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. Was there a man named Cranes working for you before you took on Rosen in 1935? A. That is right.

Q. Did you effectuate a transfer of Cranes to the Garfield, owned by Louis Cooper in New Jersey, in order for you to take on Rosen? A. No, sir.

Q. Was that done—did Cranes leave you to go to the Garfield in New Jersey? A. Yes, sir.

8336

Q. And you took on Rosen? A. Yes, sir.

Q. In other words, there was an exchange? A. Yes, sir.

Q. At that time that you employed Rosen did you know of your own knowledge whether he at that time had been employed or unemployed? A. He was unemployed at that time.

Q. Do you know when Rosen quit your employment? A. He worked about a year and a half.

Q. Do you know approximately when he quit your employment? A. I could not say. I never kept track of when he quit.

8337

Q. Do you know when he purchased, if you do, any candy store? A. No, sir.

Q. Were you ever in his candy store? A. No, sir. I have not seen him after he quit the job.

Q. When he quit the job, Mr. Cooper—I ask you now not to answer until the Court rules—did you have a talk with Rosen? A. Yes, sir.

Mr. Barshay: With your Honor's permission, may I ask this witness to relate that talk?

8338

Michael J. Monz--For Defts.--Direct

Mr. Turkus: What is the relevancy of it?

Mr. Barshay: If the Court will permit me to answer you, I will.

The Court: That question was asked before and the objection was sustained as incompetent and irrelevant.

Mr. Barshay: If your Honor rules against me, I will take an exception. No further questions of this witness.

8339

The Court: Is there anything from any other counsel?

(No answer from the counsel table.)

MICHAEL J. MONZ, residing at 64-14 Ninety-ninth Street, Queens Village, State of New York, called as a witness in behalf of the defense, after being duly sworn, testified as follows:

Direct examination by Mr. Wegman:

8340

Q. How are you employed? A. I am the chief interviewer of the District Attorney's office in New York County.

Q. The office of Thomas E. Dewey? A. Yes, sir.

Q. How long have you been so employed? A. I have been with Mr. Dewey since July 29, 1935.

Q. Is that the date on which Mr. Dewey started in on his career as Special Prosecutor? A. That is right.

Q. With the title of Deputy Assistant District Attorney, New York County? A. That is right.

Q. That was the very beginning of that investigation? A. Yes, sir.

Q. And you have continued to hold that position until the present date? A. Yes, sir.

Q. At my request have you made an examination of the records and files in the office of Thomas E. Dewey, the District Attorney? A. I have.

Q. The files of Thomas E. Dewey, as special prosecutor, with the title of Deputy Assistant District Attorney? A. I have.

8342

Q. From the beginning of that investigation until the present time? A. That is right.

Q. Are those records which you checked over the records that were kept under your supervision and direction? A. That is right.

Q. Is it the custom and practice and procedure of Mr. Dewey's office, for you to interview all persons who come to Mr. Dewey's office to make complaint or to be interviewed? A. It is.

Q. Now, do you know Joseph Rosen, or did you know Joseph Rosen? A. I never knew him.

Q. Did you ever hear of him? A. I have read the papers about him.

8343

Q. Was that after his death? A. That is right.

Q. Did you ever hear of him at all before his death? A. I did not.

Q. Is there any record whatever in the office of Thomas E. Dewey to indicate that Joseph Rosen ever came to that office, ever spoke to anyone in that office, or was ever interviewed or wanted for an interview by anybody in connection with that office?

Mr. Turkus: We never contended Mr. Rosen reached Mr. Dewey's office. Our

8344

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contention has been quite to the contrary, that he was killed to keep him from going there.

Mr. Wegman: The District Attorney took a different position at one time. I don't know whether he has modified or altered his position, but the record will show it.

8345

Mr. Turkus: I don't know what he is talking about. The testimony in this case is that the victim was slain before he reached Dewey's office, to keep him away from Dewey's office.

The Court: Mr. Wegman may be confusing Rosen with Rubin. Rubin is alleged to have gone to the District Attorney's office.

Mr. Wegman: No, Rosen is the one I am talking about. I asked this witness whether he ever had, and that is the question we are now up to.

8346

The Court: The trouble is between Rosen and Rubin, one not going to Dewey's office and the other going there. It tends to confuse the jury unless you are very careful.

Mr. Turkus: That is why I am making my objection.

Mr. Wegman: We don't want the jury to get mixed up.

Mr. Turkus: I don't think they will be anyway, but I want to keep the record straight.

Mr. Wegman: May I have an exception?

The Court: Do you claim there is any

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8347

evidence, Mr. Wegman, by the People, that Rosen went to Dewey's office?

Mr. Wegman: I do not.

The Court: Objection sustained.

Mr. Wegman: Exception.

Q. You are present in court this morning with the approval of Thomas E. Dewey, and your chief? A. Yes, sir.

The Court: Mr. Dewey is not the supervisor here. The Court's authority is supreme.

8348

Mr. Wegman: I understand that, but I believe the District Attorney has a right to show his approval.

Mr. Turkus: But that does not sanctify the appearance of this witness, to have Mr. Dewey's blessing. I think we ought to have Mr. Dewey's blessing in this case, too.

Mr. Talley: Why don't you prove that?

Mr. Turkus: I will before it is over.

8349

Mr. Talley: I object to the remark and move to strike it out.

The Court: Strike it out. The jury will disregard that.

Mr. Talley: I ask the Court to instruct the jury to disregard that statement.

The Court: I have just instructed the jury to disregard it.

Mr. Talley: I want you to do it in response to my request.

The Court: I do it in response to your request.

8350

Nat Sobler—For Defts.—Direct

Mr. Talley: It is perfectly improper, and I think the Court should take some action at remarks like that being made by the District Attorney. It is not very easy for counsel for the defense to have those strictures placed upon them.

The Court: Yes, I will place strictures on both, both Mr. Wegman and Mr. Turkus.

8351

NAT SOBLER, residing at 170 Bay 29th Street, Borough of Brooklyn, City and State of New York, called as a witness in behalf of the defense, after being duly sworn, testified as follows:

Direct examination by Mr. Barshay:

Q. Will you keep your voice up, if possible?
A. I will.

8352

Q. What was your business in 1931? A. In the express business.

Q. What was the name of your concern in 1931? A. The New York & New Jersey Clothing Transportation.

Q. Do you know when that corporation came into existence? A. I believe it was in 1927.

Q. Mr. Sobler, who was your partner in the corporation? A. Morris Bluestein and myself.

Q. Where was your office? A. No. 2 Washington Place.

Q. Before 1927 were you in the trucking business? A. That is right.

Q. Where was that? A. We had an office in Passaic, New Jersey.

Q. That was not the New York & New Jersey, was it? A. Yes.

Q. What? A. Oh, no, it was the Garfield Express Company.

Q. In other words, before 1927 you had been in some way connected with the Garfield? A. Yes, sir, started in 1922.

Q. In 1922? A. Yes, sir, that is right.

Q. At that time how long did you continue with the Garfield? A. Up to 1925.

Q. From 1922 to 1925 you were in the Garfield? A. Yes, sir.

Q. Then you got out? A. Yes, sir.

Q. During the time you were in the Garfield, from 1922 to 1925, was the defendant Buchalter, called here Lepke, was he a partner of yours during those years? A. No.

Q. When for the first time did you and Rosen become connected in the New York & New Jersey corporation? A. That was in 1931, the latter part of 1931.

Q. Was your office then in New York? A. Yes, sir.

Q. Before that time, 1931, and while you were the owner of the Garfield from 1922 to 1925, was Rosen working for you as a truckman? A. Yes, sir.

Q. Who became a partner with you in 1931, if anybody, when you became connected with Rosen? A. A fellow named Martin Kelly.

Q. Do you know whether at that time Kelly and Rosen, before being connected with you, were partners themselves? A. That is right.

8356

Nat Sobler—For Defts.—Direct

Q. Will you tell us how you and Bluestein operating as the New York & New Jersey, became connected with Rosen and Kelly in 1931, or whatever date it was?

Mr. Turkus: I object to the use of the word "how" as incompetent, immaterial and irrelevant.

The Court: It is a little indefinite. Do you mean there was a contract?

8357

Mr. Barshay: Yes.

Q. (The Court) Was the contract in writing?
A. Yes, sir.

The Court: I thought that was a corporation. The word "partner" has been used many times.

Mr. Barshay: I am using it because of the character of the man on the stand. If you want me to refer to him as a stockholder, I will.

8358

The Court: I just wanted to understand.

Q. You were a stockholder of that corporation?
A. Yes.

Q. I show you a document referred to as Defendants' Exhibit Z-3 for identification, and I ask you whether or not your signature appears thereon. A. Yes, sir.

Q. Is that a document you signed at the same time— Question withdrawn.

Q. —at the same time the other men signed it? A. I don't understand the question.

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8359

Q. Did the other men whose names appear on the paper sign it at the same time you did? A. Yes, sir.

Q. Did you see them do it? A. Yes, sir.

Mr. Barshay: I offer the document in evidence.

The Court: Let me see it.

(Paper handed to the Court.)

Mr. Barshay: I refer to the second part. There are two—the last signature on the page.

8360

The Court: I don't have to read the whole thing?

Mr. Barshay: No, I am just asking you to look at the last page and see where this man signed the document. There are two agreements attached to that exhibit here; I am only speaking of the last one.

The Court: This is all one contract?

Mr. Barshay: No, there are two of them, one is a joinder of parties and the other is a disassociation of parties in 1932, and they are under one cover.

8361

The Court: This is dated the 27th of April, 1922.

Mr. Barshay: That is not the one to which I had reference.

The Court: This is the one you handed up.

Mr. Barshay: I handed it up because they are joined together, but if your Honor will look toward the end you will find a separate agreement.

8362

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The Court: They appear to be one instrument. I see now there are two.

Mr. Barshay: That is right.

The Court: This one is the 28th of October, 1931.

Mr. Barshay: That is right.

The Court: I will read that.

Mr. Barshay, do you intend to put in the certificate of incorporation?

Mr. Barshay: Of which corporation?

8363

The Court: Was the corporation formed?

Mr. Barshay: No, they bought stock in the existing corporation which was organized, according to this witness's testimony, in 1927, four years before.

The Court: Please correct me if I am wrong. This appears to me to be a contract to reorganize by a re-allotment of shares.

Mr. Barshay: In the existing agreement, known as the New York & New Jersey.

8364

The Court: By the re-allotment of shares so that new-comers would have a participation? Am I right so far?

Mr. Barshay: Yes.

The Court: As to taking over the trucking and possibly some other assets, as to who the officers were to be and where and when the meeting was to be held for the purpose of carrying out the provisions of the contract, and as to the proposed amendments to the constitution and by-laws—I don't know what he means by

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"constitution"—but, at any rate, proposed amendments to the by-laws and also certain fixations of salaries of the officers?

Mr. Barshay: That is right.

The Court: Now let me ask you this, Mr. Barshay: Have you got a minute book to show whether this was done?

Mr. Barshay: I have not.

The Court: Is it obtainable?

Mr. Barshay: I cannot answer that of my own personal knowledge. This is the first time this question occurred to me.

8366

The Court: You see, if this goes in, the question is, is it competent to presume that it was carried into effect in precisely the manner stated?

Mr. Barshay: I am in a position to prove why one of the men did not carry out this contract. That is exactly why I called this witness.

The Court: Now, you answer me something else, concerning the evidence of Harold Rosen as to the alleged pantomime that he witnessed at the Broadway Central Hotel, and the testimony of his sister, as to the examination of certain accounts in or about the month of July. Do you claim that this has any bearing on that?

8367

Mr. Barshay: It has a bearing.

The Court: Do you mind telling me what it is, so I will be able to rule intelligently?

Mr. Barshay: I will be glad to do so. First, before that occurrence took place, at the address where Gurrah—

8368

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The Court: I mean, without revealing any detailed stuff before the jury.

Mr. Barshay: Kelly was already out, as I understand; he got out in April, 1932, as I intend to prove by the next exhibit. He got out, and I will show the jury the reason for his getting out was that it was an insolvent company. I will try to prove that through this man. Then the three of them continued until the stoppage, and, at the stoppage, Rosen went out, and we will try to prove he went out, not as Mr. Turkus said—because he was forced out—but because the company was absolutely broke and insolvent.

8369

The Court: You claim the company was not functioning at the time the books were supposed to have been shown and certain accounts forbidden?

Mr. Barshay: They were positively functioning and continued thereafter until December of 1932.

8370

The Court: Of course, if a company is functioning, there must at least be hope of establishing it on a sound basis, even if it is having a struggle.

Mr. Barshay: I shall show through this witness that Rosen abandoned that hope; that it existed then.

The Court: You see, the jury cannot be permitted to conjecture about what was said during an alleged pantomime; it has to depend upon evidence. But as to whether or not the company was solvent or having trouble financially—a struggle—at

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8371

the time of the alleged submission of the account, do you think that would have any bearing as to whether any such conversation took place?

Mr. Barshay: I certainly think so.

The Court: Do you mean you know the Company was having financial difficulty, or the defendants would not have forbidden those Pennsylvania accounts?

Mr. Barshay: There was nothing to forbid; there was nothing in it to forbid to this man Rosen. He had nothing.

8372

The Court: You say his business was functioning?

Mr. Barshay: Yes.

The Court: And that it was voluntary?

Mr. Barshay: I do not admit the existence of that conference at all. We dispute it. I say it is a fabrication.

The Court: I am trying to figure out in what manner the precise financial condition of the company would have a bearing upon either of those two alleged instances. The impression I have gained is that the company was having a struggle of some kind.

8373

Mr. Barshay: That is right.

The Court: A financial struggle, like many small businesses, but nevertheless continued. I will let this in for what it is worth. It will have to be detached.

Mr. Barshay: May I say one thing: In all the comments which your Honor has made with respect to the record here, about this conference, I hope that there will be

8374

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no innuendo with the jury that we concede the existence of any such conference, either there or at the Broadway Central Hotel.

The Court: Of course not.

Mr. Barshay: We firmly dispute it. We say it is a fabrication, and we will prove it, if we can.

8375

The Court: These two contracts, one accepted as an exhibit and one not accepted as an exhibit, have been fastened together with a fastener; one detached from its cover. Will you fasten it again?

Mr. Barshay: Except the cover. Whoever put on this one has the wrong date by mistake, which I thought the lawyer would explain, but he was not permitted to.

Mr. Turkus: Take it without the cover.

8376

The Court: You had better fasten it together before the sheets become loose; put a proper cover on it. I handed you back the cover.

Mr. Barshay: The cover has the wrong date. It has the wrong date on it by error, which the lawyer tried to explain, but he was foreclosed. 1926, five years before this contract was drawn. I do not want Mr. Turkus to misunderstand me.

The Court: Mark it in evidence, the original contract, October, 1931.

Mr. Turkus: In order to keep the record straight, that was ripped out of a bundle attached to Defendants' Exhibit Z-3 for identification.

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8377

The Court: Exactly. It presented the appearance of being one document. I did not sense there were two covers; one was concealed—until my attention was called to it upon inquiry. It caused confusion at the time.

Mr. Barshay: You mean it has been separated from Z-3, the exhibit for identification?

Mr. Turkus: Yes. But there was an exception taken to the exclusion of Z-3, and the record must be clear.

8378

The Court: This part is competent. Mark it.

(Received and marked Defendants' Exhibit 4.)

By Mr. Barshay:

Q. Can you tell us what—

The Court: Don't you want to read that to the jury?

8379

Mr. Barshay: If you want me to do so now I will. I thought I would do it later.

The Court: One step at a time, and we will avoid confusion.

(Mr. Barshay then read Exhibit 4 to the jury, as follows:)

"This agreement, made this 28th day of October, in the year of Our Lord, One Thousand Nine Hundred and thirty-one;

"Between Morris Bluestein and Nathan Sobler, of the City of Passaic, County of

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Passaic and State of New Jersey, parties of the first part, and

“Martin F. Kelly, Inc., a corp. of N. J. and

“Joseph Rosen, of the City of _____ and State of _____ parties of the second part,

“Witnesseth: That for and in consideration of the sum of One Dollar and other good and valuable considerations, each to the other in hand paid, receipt hereof is hereby acknowledged, the parties hereto agree as follows:

“That whereas, the parties of the first part are all the holders of all the shares of stock of the New York & New Jersey Clothing Transportation Company Inc.,

“That whereas, the parties of the first part are also the owners of four certain trucks which were used in the trucking business of the said New York & New Jersey Clothing Transportation Company Inc., which said trucks are known as follows:

“Model No. 621, 3-ton White truck;

“Model No. 61, 2-ton White truck;

“Model No. 60, 1½-ton White truck;

“Model No. 51—2½-ton White truck;

“That whereas, there is still due on the said trucks certain notes which are payable monthly, and the said New York & New Jersey Clothing Transportation Company Inc., also have a certain amount of good will in their said trucking business.

“That whereas, the parties of the first part are desirous of combining with the

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parties of the second part in the said trucking business under the name of New York & New Jersey Clothing Transportation Company Inc.,

“That whereas, the parties of the second part have heretofore and still are in the said trucking business and also have a certain amount of good will in their said business.

“That whereas, the parties of the second part are also the owners of five other trucks which have been used in the conduct of their trucking business, which said five trucks are as follows:

8384

“One 2-ton Brockway truck;

“Two 2½-ton Garford Trucks;

“One 2-ton Auto Car;

“One 1-ton Ford truck.

“That whereas, there are still certain unpaid monthly notes due on some of the trucks hereinabove mentioned.

“That whereas, Martin F. Kelly, Inc., has also the authority and use of a certain garage in the rear of premises known as No. 9 Catherine Street, Elizabeth, New Jersey, which he has used in the conduct of his said trucking business.

8385

“That whereas, the parties of the second part are desirous of joining in with the parties of the first part in the operation of the business heretofore conducted by the New York & New Jersey Clothing Transportation Company, Inc.,

“Now, therefore, in consideration of the mutual promises and agreements herein

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contained, the parties hereto agree to the following:

"1. That the parties of the first part will surrender to the New York and New Jersey Clothing Transportation Company, Inc., all its shares of stock and on November 2nd, 1931, reorganize the said corporation, so that new shares of stock will be issued to the following:

Martin F. Kelly—50 shares;

Joseph Rosen—50 shares;

Nathan Sobler—50 shares;

Morris Bluestein—50 shares;

and these 200 shares will constitute all the outstanding shares of said corporation.

"2. That the said corporation shall do business with \$20,000.00 actual paid in, being the aggregate value of the combined assets of all the parties hereto.

"3. That a meeting of the parties hereto will be held at the offices of Henry H. Eisenberg, No. 60 Broad Street, Elizabeth, N. J. on the 2nd day of November, 1931, at which time the by-laws governing the conducting of the said corporation business will be prepared and adopted and the election of officers will take place. It is herein mutually agreed that the officers of the corporation will be as follows:

"Martin F. Kelly—President,

"Joseph Rosen—Vice-President,

"Nathan Sobler—Secretary,

"Morris Bluestein—Treasurer.

"4. That the corporation will do busi-

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ness with the Bank of America, at its Broadway and 3rd Street, Branch, and that the President, Martin F. Kelly, and Secretary Nathan Sobler, shall be the only authorized signatures on the checks or other instruments in writing to be issued by the corporation, and that at the meeting of November 2nd, proper resolutions to that effect will be prepared.

“5. That the corporation will hold monthly meetings on the second Saturday of each and every month and that dividends by the said corporation will be declared quarter-annually.

8390

“6. The corporation shall also make contracts of hire with the parties hereto, which said contracts will be in full force and effect as long as the respective parties to said contracts shall retain control or ownership of their shares of stock in said corporation, said contracts will provide for payment of \$75.00 weekly salary to each of the parties hereto and said contracts will contain a restrictive covenant, which will prevent the respective parties to the contract from directly or indirectly canvassing from the customers of the said New York & New Jersey Clothing Transportation Company, Inc., should the parties of the respective contract quit their job or sell out their interest in the said corporation, for a period of five years, from date of quitting their job or disposing of their shares of stock.

8391

“7. That the corporation shall not go

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into any enterprise or any undertaking whatsoever without a vote of all the shareholders as it is the intentions of the parties hereto that all the shareholders of the corporation must consent to any undertaking of the corporation involving the expenditures of any monies.

8393

“8. That the constitution and by-laws will also provide that should any of the shareholders desire to dispose of their shares of stock in the said corporation, that individual shall first offer his shares of stock to the corporation, who is to pay for the same according to the book value thereof or at such price as can be mutually agreed between the seller and the corporation, and should the parties be unable to come to an agreement as to the price of those shares, the said shareholder shall have the opportunity of attempting to dispose of his shares to some third party and the price offered by the said third party shall be submitted to the corporation for a competitive bid, and the said corporation is to have the first privilege of purchasing the said shares of stock, if the corporation offer is equal to or larger than that third party's bid, and should the corporation fail or refuse to make said purchase after the offer is made, then the shareholder shall have the privilege of selling to that third party and said third party will step into the shoes of the retired shareholder with the same rights

8394

and privileges as said retiring shareholder had in the corporation.

"9. That the by-laws will also provide that should one of the parties hereto de-
cease, then the widow of that party shall
receive the salary of her husband out of
which salary the widow is to pay for the
services of a man who will substitute for
and do the work of her husband in said
corporation, providing such salary does
not exceed the sum of \$40.00 per week, on
condition, however, that should one of the
parties hereto prepare a will and designate
some other person than his wife to re-
ceive that benefit, that person so desig-
nated will receive that benefit in accord-
ance with the wishes of the deceased
shareholder.

8396

"10. That the parties of the first part
will lease without any expense to the cor-
poration, their four White trucks herein-
above enumerated until the 15th day of
December, at which time a bill of sale will
be issued by the parties of the first part
direct to the corporation, for all the said
trucks.

8397

"11. That the parties of the first part
will cause all unpaid notes on the trucks
up to November to be paid so that the
corporation will only assume the balance
of the notes due on the trucks on or after
November 2nd.

"12. That the parties of the second
part will lease without any expense to the
corporation their five trucks hereinabove

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enumerated until after the 15th day of December, at which time a bill of sale will be issued by the parties of the second part direct to the corporation for the said trucks.

8399

"13. That Martin F. Kelly will give a lease to the corporation on his said garage for a period of one year, at a rental of \$50.00 per month, which said lease will contain a privilege in favor of the corporation for the renewal of the said lease for an additional period of one year at the same rental of \$50.00 per month, said lease to commence on November 1, 1931.

"14. That the parties of the second part will pay or cause to be paid all notes that may be due on their trucks prior to November 2nd, 1931, and the corporation will take over the obligations of the parties of the second part on said trucks, falling due on and after November 2nd, 1931.

8400

"15. That whereas, the parties hereto agree that after an adjustment of all equity of the respective interests of the parties of the first part and the parties of the second part, there is a balance in favor of the parties of the first part in the sum of One thousand Dollars which the parties of the second part agree to pay as follows: On May 1, 1932, \$500.00 and on November 2nd, 1932, balance of \$500.00

"16. The parties of the first part represent that the balance due on the trucks which were used in the conduct of the

Nat Sobler—For Defts.—Direct

8401

business of the New York & New Jersey Clothing Transportation Company Inc., is not in excess of \$7,000.00 and should there be an excess of that amount, they as individuals agree to pay the same.

"17. The respective parties to this agreement hereby agree that the obligations of this corporation that are to be assumed by the respective parties shall be only those pertaining to the unpaid balance due on trucks and for work done on

8402

the bodies of the said trucks, all other obligations, such as gas, oil, wages, garage rent, tires and etc., shall be paid by the respective parties hereto and not charged upon the corporation, and the parties of the first part represent that the New York & New Jersey Clothing Transportation Company Inc., are not indebted in any amount whatsoever, except for balance due on the trucks and for balance that may be due for body work on the trucks.

8403

"In the place of paragraph 8 the following clause is to be substituted:

"That should any of the shareholders desire to dispose of their interest or shares of stock in this corporation or quit their job, then and in that event that retiring shareholder shall sell his shares of stock to the corporation, who are to pay for the same one hundred per cent of the book value of said shares at that time the seller is offering the same for sale and

8404

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said one hundred per cent is to be paid in cash at the time the said shares are surrendered.

“In witness whereof, the said parties have hereunto interchangeably set their hands and seals the day and year first above mentioned.

Morris Bluestein (L.S.)

Nat. Sobler (L. S.)

Martin F. Kelly Inc.

By Martin F. Kelly,

President.

Joseph Rosen (L. S.)

8405

Signed, sealed and delivered
in the presence of

Henry H. Eisenberg

Attest:

Secretary.

8406

By Mr. Barshay:

Q. After the execution of this agreement I just read, Mr. Sobler, did the four of you commence to work in this corporation? A. That is right.

Q. Do you know of your own knowledge whether Rosen put in any money? A. No.

Q. Do you know whether he did or he did not? A. He didn't.

Q. He did not? A. No.

Q. Do you know whether Rosen had any trucks? A. Well, he had trucks with Kelly.

Q. Do you know whether he had any of his own? A. I don't think he had any.

Q. Do you know whether he had any trucks registered in his own name? A. No.

Q. Did Kelly put in any money? A. No.

Q. Did you and Bluestein put in any money? A. We had money in the bank.

Q. How much? A. I could not say.

Q. About. A. A couple thousands or so.

Q. Was it about \$1,550? A. I could not give you—it is ten years passed by.

8408

Q. Where did you have your routes? A. Jersey and New York.

Q. In New Jersey and— A. New York. Some part of it in New York.

Q. Did you have any routes then in Pennsylvania? A. No.

Q. To your knowledge, when this corporation was reorganized as per agreement, did Rosen have any customers in Pennsylvania? A. He said he had.

Q. Do you know their names? A. Well, I can't remember.

8409

Q. Do you know how many? A. Well, about five or six or something like it, I think.

Q. Were they big ones or small ones, if you know? A. Well, they were fairly good size.

Q. The first month of your doing business together, did you draw the pay agreed upon, the \$75 a week? A. First month, yes.

Q. Did the Company make money the first month? A. We could not know we make any money until the 1st of the month.

Q. And on the 1st of the month did you make any money? A. No, we went about \$1,200 or \$1,400 in the rear. All our money was gone.

8410

Nat Sobler—For Defts.—Direct

Q. I did not hear that. A. All our money what we had there was gone.

Q. Was gone? A. That is right.

Q. You took in some money from the customers, did you not? A. We worked by months. We worked for October a full month, we collected in November, so we did not have much to collect. We were in the rear about \$1,200 or \$1,400, the first month.

8411

Q. At the end of the first month, this corporation was in arrears? A. About \$1,200 or \$1,400.

Q. Going to the next month, Mr. Sobler, at the end of the second month was the company ahead or in arrears? A. In arrears.

Q. How much? A. I could not say. That I could not say. We did not have no money, but we stopped drawing pay. We didn't have no money and we stopped drawing pay. I refused to put more money into it, and we owed everybody and we couldn't run it any further. That's all.

8412

Q. That is the second? A. That is the second month.

Q. So that the second month you did not draw pay? A. No.

Q. Do you know whether Rosen drew pay? A. No.

Q. Were you able to pay the garage bills to Kelly? A. I don't think we did.

Q. Did you continue for the third month in January of 1932? Did you? A. Yes.

Q. At the end of the third month, did the company make or lose money? A. We still lost money.

Q. Did you put in any more? A. No, I didn't.

Q. Do you know whether or not the finance companies began to foreclose on the trucks? A. I sure do.

Q. Did they? A. I believe that the garage man chained the trucks up.

Q. Do you know which garage man? A. In Passaic, on Main Street.

Q. Was it Pink's? A. Pink's Garage.

Q. Did you draw money the third month? A. No.

Q. At the end of the fourth month— A. No, we did not. 8414

Q. Just one month at a time. The end of the fourth month, did the company make money? A. No.

Q. Did you draw pay? A. No.

Q. Did the other partners draw pay? A. No.

Q. Were you indebted to the workmen for pay? A. Some part of it, yes. Can I answer?

Q. What? A. We used to give them 'head checks.

Q. You used to give them 'head checks for pay? A. That is right. 8415

Q. At the end of the fifth month? A. We still did not draw no money.

Q. In April of 1932 did Kelly withdraw from the business? A. Yes.

Q. Before Kelly withdrew from the business, to your knowledge were papers served upon you? A. After he withdraw—

Q. Please, Mr. Sobler, I have to finish the question. Were papers served upon you? A. Repeat that again, please.

Q. I want to finish the question. I said, before Mr. Kelly withdrew from the business in

8416

Nat Sobler--For Defts.--Direct

April of 1932, do you know of your own knowledge whether or not you were served with papers by Kelly's lawyer declaring your corporation insolvent because you had not paid him either for the garage rent or his salary? A. Not before.

Q. When? A. After, a few days after.

Q. A few days after what? A. After Kelly withdraw.

Q. The papers were served? A. That is right.

8417

Q. How much did you owe Kelly for back wages, I mean the corporation? A. I could not say.

Q. Did you owe him a lot? A. Maybe five or six hundred dollars, maybe seven hundred.

Q. How much was the corporation indebted to you for back wages, do you know? A. About the same amount.

Q. And to Rosen? A. The same amount.

Q. And to Bluestein? A. Same thing.

8418

Q. Do you know of your own knowledge whether or not you paid the garage rent which the corporation agreed to pay to Kelly? A. To Kelly, no.

Q. You did not pay? A. Did not pay.

Q. Do you know about the average balance your company had in the bank during those five months? A. I don't think we had any balance in it.

Q. Was it a little balance or a large balance, do you know? A. We had to change banks all the time.

Q. Tell the Judge and jury why? A. We could not make any deposits. We didn't make no money, so we had nothing in the bank.

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8419

Q. After Kelly served those papers through his lawyer upon you, did you and Rosen and Bluestein and Kelly come to some agreement?

A. Yes.

Q. Can you tell us what the agreement was? Yes or no? A. Yes, I think I can.

Q. All right.

Mr. Barshay: Mr. Turkus, this is Exhibit 3-Z for identification. I am now directing this witness's attention to Z-3 for identification.

8420

Mr. Turkus: The balance of it?

Mr. Barshay: The balance of it.

Q. I ask you, Mr. Sobler, whether your signature is on this paper. A. Yes.

Q. And did you see the other men sign that paper at the same time as you did? A. I did.

Mr. Barshay: I offer that in evidence.

The Court: Let me see it. This is the split-up of the arrangement?

Mr. Barshay: Yes, your Honor.

The Court: They came together in October and divided again in April?

Mr. Barshay: That is right, sir.

The Court: Admitted.

8421

(Received and marked Defendants' Exhibit 5 in evidence.)

The Court: Briefly—tell me if I am wrong—Kelly was out?

Mr. Barshay: Kelly was out.

8422

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The Court: The company continued, run by the remaining two!

Mr. Turkus: Three.

Mr. Barshay: Rosen, Sobler, and Bluestein.

The Court: Read it to the jury.

Mr. Barshay: (Reading) "THIS AGREEMENT, made this 27th day of April, in the year of Our Lord, One thousand Nine hundred and thirty-two:

8423

"BETWEEN

"MORRIS BLUESTEIN, NATHAN SOBLER and JOSEPH ROSEN, as individuals, of the City of Passaic, County of Passaic and State of New Jersey, and NEW YORK AND NEW JERSEY CLOTHING TRANSPORTATION COMPANY, Inc., a corp. of New Jersey, parties of the first part,

AND

8424

MARTIN F. KELLY INC. a corp. of N.J. and MARTIN F. KELLY, as an individual, of the City of Elizabeth, County of Union and State of New Jersey, parties of the second part

WITNESSETH: That for and in consideration of the sum of ONE DOLLAR and other good and valuable considerations, each to the other in hand paid, receipt whereof is hereby acknowledged, the parties hereto agree as follows:

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8425

That whereas, on the 28th day of October, 1931, Morris Bluestein and Nathan Sobler, who were all the shareholders of the New York and New Jersey Clothing Transportation Company Inc. and Martin F. Kelly Inc. and Joseph Rosen, agreed under the agreement above mentioned to consolidate and form one corporation, to be known and designated as the New York and New Jersey Clothing Transportation Company Inc. a true copy of which said agreement is attached hereto and made a part hereof and marked Agreement A.

8426

That whereas, all the parties hereto have carried out said agreement and consolidation and each of the parties hereto have performed their share in the said formation of the newly formed organization, the New York and New Jersey Clothing Transportation Company Inc.

That whereas, the parties hereto mutually agreed that it is for the best interest of all the parties hereto that the parties of the second part herein, to wit, Martin F. Kelly Inc. and Martin F. Kelly, individually, be paid out as and for his interest in the said corporation, so that the remaining interest in the said corporation will be held by Nathan Sobler, Morris Bluestein and Joseph Rosen.

8427

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained which the parties hereto admit

8428

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is valuable consideration, the parties hereto agree as follows:

2

That the said New York and New Jersey Clothing Transportation Company, Inc. do convey to the parties of the second part or to one whom they may designate, the four trucks which the said Martin F. Kelly Inc., heretofore conveyed to the corporation in the agreement above mentioned and marked agreement A;

8429

One—2 ton Brockway Truck;

One—2½ ton Garford Truck;

One—2 ton Auto Car and

One—1-ton Ford Truck.

That the parties of the first part assume all the outstanding obligations of the said New York and New Jersey Clothing Transportation Company Inc. except those which will hereinafter be specifically enumerated and save the parties of the second part harmless by reason of any indebtedness of the said New York and New Jersey Clothing Transportation Company Inc. except the following:

8430

Labor, and also protested

check to Mr. P. Leib \$261.62

Due to Jannelli for 5

months repairs on trucks 310.00

Ford notes 135.00

Hire truck to Long Branch 6.00

Hire truck to New York
from Point Koski 9.50

Petty cash advanced to
Rosen 9.00

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8431

Cash advanced to Blue-	
stein	5.00
To American Oil	23.00
Notes on Brockway Truck	231.00
Lost Silk	286.00
Garage rent	200.00
Linden Sales for truck	
shaft	8.00
Straightening Chassey	10.75
Tire Rebuilding	5.50
John Carr, battery and	
ignition service	21.10
<hr/>	
Total	\$1521.47

8432

To meet these obligations the said New York and New Jersey Clothing Transportation Company Inc. are to give to the parties of the second part in addition to the trucks above enumerated the sum of \$852.97, which said amount is to be paid in the following manner; \$448.20 collection due on the route, worked on by the parties of the second part and \$100.00 in cash this day and the balance of \$304.37 by two promissory notes, one in the sum of \$154.37 due 60 days after the date of its making and one note in the sum of \$150.00 due 90 days after the date of its making, both of said notes are to be made by the corporation and to be endorsed by the individuals herein mentioned as the parties of the first part, and as security for the repayment of said notes the parties of the first part agree and hereby do

8433

8434

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assign all their outstanding accounts, subject however, to the right the parties of the first part retain in collecting the said moneys and pay the said notes out of the first moneys collected, so that said notes will be paid prior to their due date and should the moneys be collected by the parties of the first part, the party of the second part hereby designates each and all of the parties of the first part as his or its agent for the collection of the said moneys due on said outstanding accounts, and the first moneys collected on said outstanding accounts are to be applied to the repayment of the balance of \$304.37, representing the total amount due on both notes, which the parties of the first part represent they will do and will not use the said funds until said notes are paid, for any other purpose, and the parties of the second part is not to notify or collect any moneys on the said accounts due to the parties of the first part, unless he ascertains that a default has been made in this covenant.

8435

8436

The parties of the first part represent that there is no indebtedness due on the trucks to be conveyed to the parties of the second part as above mentioned, except such indebtedness as the parties of the second part has knowledge of, which is represented to be arrearages on notes the finance company, damages to the body on a large Brockway truck and such other items as is enumerated on the list herein-

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8437

before enumerated, as items that are to be paid for and assumed by the parties of the second part.

Morris Bluestein and Nathan Sobler, two of the parties of the first part herein are to give a release to the parties of the second part for \$1000.00 mentioned in the agreement herein attached and marked agreement 'A' which was to be paid by the parties of the second part to the said Morris Bluestein and Nathan Sobler, as an additional investment by the parties of the second part in the said New York and New Jersey Clothing Transportation Company Inc. being the amount designated and agreed upon as a difference in equity.

8438

The parties of the second part are to execute a release to the New York and New Jersey Clothing Transportation Company Inc., releasing it from any and all indebtedness due it by reason of its former association in the said corporation and Martin F. Kelly as an individual is to release the said New York and New Jersey Clothing Transportation Company Inc., from the contract of hire formerly given by the corporation to Martin F. Kelly.

8439

The parties of the second part are also to release one, Joseph Rosen, who was formerly associated with the parties of the second part, by reason of all indebtedness due from Joseph Rosen to the parties of the second part, which said indebtedness amounted to approximately \$4750.00.

8440

Nat Sobler—For Defts.—Direct

The parties of the first part hereby assign to the parties of the second part the following outstanding accounts, which are the accounts above mentioned, given as security for the repayment of the two notes represented to be the balance due to the parties of the second part and the moneys collected on the accounts are to be first paid to the parties of the second part; the following are the accounts mentioned;

8441

Standard Trouser	\$45.64
Red Bank Co.	27.80
Ledgin	145.18
Schwartz & Starg	205.00
Finn	256.00
Ideal Paid \$12.00	27.00
Pistcal Mfg.	42.36
Princeton	36.01
Kramer & Son	49.74
Passaic Clothing	181.31
Garfield Vest	24.92
Frourvante	19.08
Estein	4.02
Condina	62.70
Duratex Mfg.	11.60
Ferrere	340.50
Capital Coats, Newark	31.45
Best Make	37.00
Carbondale Clothing	71.74
Cortland	46.46
Plainfield	373.00
Enterprise	39.21
Fashion paid \$6.05	170.54

8442

Nat Sobler—For Defts.—Direct

8443

Rosenberg	17.61
Rel Clothing	80.00
Umansky	121.91
Weeks Barre	9.93
Bon Weiss	29.08
Superior Quality	44.25

The parties of the second part is to assign to the three individuals mentioned as parties of the first part the 50 shares of stock held by it or him in the said New York or New Jersey Clothing Transportation Company Inc. which said stock, before the assignment becomes effective shall be held in escrow by J. Bernard Saltzman, attorney for the parties of the first part, until such time as the notes above mentioned are repaid or the parties of the first part refuse or neglect to pay, the moneys that may be collected by them or it on the accounts outstanding, or any breach of this agreement on the part of the parties of the first part, and should the parties of the first part fail to comply with these provisions or any of them in any measure whatsoever, then the said J. Bernard Saltzman, is to redeliver the said 50 shares of stock to the parties of the second part, said redelivery to be made by the said J. Bernard Saltzman, immediately upon receiving notice that the agreement or any part of it has not been properly performed by the parties of the first part or either of them.

8444

8445

The parties of the second part is to

8446

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immediately, upon receipt of the notes in question deliver a resignation as officer and director from the said corporation, and the parties of the second part is to sign a check which will be drawn on the First National Bank of 580 Broadway, New York City, which said check will be in an amount representing the balance in said bank and the said New York and New Jersey Clothing Transportation Clothing Company Inc. is to draw under the direction and supervision of the parties of the first part and proper representations that a check so signed represents and balance held in said bank.

8447

The 50 shares of stock above referred to as those being assigned to J. Bernard Saltzman are to be held in escrow by him and the said J. Bernard Saltzman shall have full power to vote said stock as if he were the original owner thereof, provided, however, that the said J. B. Saltzman shall not consent to the filing of a voluntary petition in Bankruptcy and not consent to the appointment of an equity receiver.

8448

The parties of the first part in lieu of the sum of \$304.73, being the balance due to the parties of the second part, shall have the privilege of paying the sum of \$250.00 in cash, in lieu of said sum of \$304.73, provided, however, said \$250.00 is paid on or before, Tuesday, May 2nd, 1932.

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8449

IN WITNESS WHEREOF, the parties have
hereto interchangeably set their hands and
seal the day and year first above written.

NEW YORK AND NEW JERSEY CLOTHING
TRANSPORTATION COMPANY INC.

By: JOSEPH ROSEN,
Vice President

NAT SOBLER,

8450

JOSEPH ROSEN

Signed, sealed and delivered
in the presence of

Attested:

NAT SOBLER
Secretary

MARTIN F. KELLY INC.

8451

By: MARTIN F. KELLY,
President

MARTIN F. KELLY."

Attested:

.....
Secretary."

8452

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Mr. Barshay: May the record show that the Exhibit A mentioned in the document I just read is the one marked in evidence here as Defendants' Exhibit No. 4? They were both part of the same exhibit, Z-3, before.

By Mr. Barshay:

8453

Q. Mr. Sobler, after you gave those notes, one to be paid in 60 days and one in 90, did you pay those notes? Did the corporation pay those notes? A. I don't think we did.

Mr. Turkus: There is a lot of testimony here where "I don't think, ' and "I don't think."

The Court: Don't tell me what the testimony is; if you object, I will rule.

Mr. Turkus: I am going to ask that it be stricken.

The Court: Strike it out.

8454

The Witness: We did not pay that, your Honor.

Q. Please, do you know of your own knowledge—don't tell me what you think or guess—do you know of your own knowledge whether or not those notes came back for non-payment? A. Came back for non-payment but I took care of it later.

Q. Personally? A. Yes.

Q. To your own knowledge were any dividends declared before Kelly left the corporation? A. No.

Q. After Kelly left the corporation, did you, Rosen, and Bluestein continue to work? A. Yes.

Q. How long did you continue to work before Rosen quit? A. That was 1932, July, the end or the later part of July.

Q. From April, 1932, when Kelly quit until July, going back to the month of May, do you know whether or not your corporation made any money? A. No.

Q. Do you know whether they did? A. No.

Q. Did they make money? A. No.

Q. Do you know whether or not at the end of the month there was a balance in the bank of your corporation? A. There was no balance in the bank at any time.

Q. Did you draw your pay that month? A. Not of the corporation.

Q. Did Rosen draw any pay that month? A. No.

Q. Did Bluestein draw pay? A. No.

The Court: What month?

Mr. Barshay: The month of May which followed Kelly's withdrawal.

Q. Did you take in any accounts? A. Accounts of what?

Q. Did you collect any accounts? A. We did.

Q. Was there enough to pay the workmen? A. No.

Q. Did you still continue to give head checks? A. That is right.

Q. Do you know whether or not Rosen brought in any moneys into the corporation during the month? A. No.

Q. Of May? A. He did not.

8458

Nat Sahler—For Defts.—Direct

Q. In the month of June did the company make money? A. No.

Q. In the month of July did the company make money? A. No.

Q. Were any dividends declared? A. No, sir.

Q. Did the finance company seize any trucks? A. Yes.

Q. How many? A. Two.

8459

Q. Do you know the name of the finance company? A. Well, the White truck, one White and one Sterling.

Q. Do you know how much Rosen drew during those months? A. No.

Q. May, June and July, 1932? A. No.

Q. Did you have an accountant? A. Accountant? A. No.

Q. Did you have a bookkeeper? A. Not at that time, no.

Q. When did you have a bookkeeper? A. From the beginning.

Q. Who was it? A. Harold Rosen.

8460

Q. How long did he stay? A. About two months or so.

Q. How much did he get? A. \$15 a week.

Q. Who was the bookkeeper who followed Harold Rosen? A. We didn't have any.

Q. Then did you employ any other bookkeeper? A. No.

Q. Do you remember Sylvia Rosen, the daughter of Joseph Rosen? A. I do.

Q. Did she come to the place? A. She used to come in but not for work.

Q. Did she help you at all with the books? A. No, never had—

Q. Did you give her any money?

Nat Sobler—For Defts.—Direct

8461

Mr. Turkus: Wait a minute. Don't shut it off.

Mr. Barshay: If he did not finish, let him finish.

Q. You tell us everything about Sylvia Rosen.

A. She did not have no work that time. She used to come in once or twice a week just to see her father, as far as I know.

The Court: We do not know how far you know.

8462

The Witness: She used to come in to see her father but no getting pay or anything like it.

Q. Did you give her a regular salary every week? A. Sylvia Rosen?

Q. Yes. A. No, sir.

Q. Do you know when Joseph Rosen became dissociated from your company, when he left your company? A. Was in August—I don't remember the date but was the month of August, the beginning of August.

8463

Q. Do you remember the stoppage in 1932? A. I do.

Q. With respect to the stoppage, did he quit before, or during, or after? A. During the stoppage.

Q. Do you know how long after the stoppage began that he quit? A. Well, the stoppage began, I think, about Monday or something about Monday and he quit Saturday.

The Court: What month, if you know?

The Witness: In August.

8464

Nat Sobler—For Defts.—Direct

Q. Can I refresh your recollection by referring to the month of August, 1932? A. That is right, that was the stoppage.

Q. Did Rosen have a talk with you? A. He did.

Q. Where? A. On Fifth Avenue and 17th Street.

Q. How many days after the stoppage started? A. Must have been about four or five or six days. Was on a Saturday. I remember that Saturday.

8465

Q. On a Saturday? A. On a Saturday.

Q. You tell us what Rosen said to you. What did he say to you? A. About what?

Q. You said you had a talk with him during the stoppage.

The Court: Is not this hearsay?

Mr. Barshay: No, this is what Rosen said to him.

The Court: This is not a suit against Rosen.

Mr. Barshay: I beg pardon?

8466

The Court: This is not a lawsuit against Rosen.

Mr. Barshay: We went to show how he became dissociated from the firm.

The Court: It is hearsay.

Mr. Barshay: It is not hearsay, your Honor. We are going to prove now—

The Court: Rosen is not here. He is not a witness. You are not impeaching his testimony.

Mr. Barshay: I am not, sir.

The Court: If the District Attorney does not object—it is hearsay—the Court

Nat Sobler—For Defts.—Direct

8467

will not be put in a forced position of doing the District Attorney's work. Go ahead.

Q. What did Rosen say to you about quitting your firm? A. Well, he came over Saturday after twelve o'clock and he says, "I am going to quit." I said, "What's the matter, Joe?" He says, "I am getting a job back by the Garfield Express and I am getting a hundred to \$125 a week." I says, "I know Louis Cooper very well. Once he said no, so now how are you going back to him?" He said, "Louis Buchalter or Lepke got in as a partner there and he told Louis Cooper to take me back to work."

8468

Q. Was that the end of his association with your company? A. He left. That was the end of it.

Q. Do you know how much your company owed Rosen for back wages at that time? A. I don't know. They owed him as much as they owed me.

Q. Did you and Bluestein continue? A. What is that?

8469

Q. Did you and Bluestein continue to do business? A. Yes.

Q. Did you have to pay or did you pay any money to Rosen for his shares in the corporation when he quit? A. No.

Q. Did he ever ask you for any money for his shares? A. No.

Q. How long did you and Bluestein continue in business with the New York and New Jersey after that? A. After that, I believe five months.

8470

Nat Sobler—For Defts.—Direct

Q. During the five months, did you make any money? A. Well, we start to make a living again.

Q. Where did you go? A. Passaic, Jersey State.

Mr. Turkus: State of Jersey. What else?

The Witness: And New York City.

8471

Q. So that there were only two partners left? A. That is right.

Q. When did you discontinue your association with Mr. Bluestein? A. I believe it was 1933.

Q. You continued with the New York and New Jersey, didn't you? A. Not in the New York and New Jersey.

Q. Under another name? A. Under another name.

Q. Was there ever a time when Lepke, the defendant Buchalter, sent for you during the stoppage or before the stoppage of 1932? A. No.

8472

Mr. Turkus: Wait a minute, sir. There is no testimony that he ever did.

The Court: Sustained.

Mr. Barshay: Exception.

Q. Did Rosen ever tell you at any time in his life that Lepke sent for him while he was a member of your company?

Mr. Turkus: That is objected to.

The Court: Sustained.

Mr. Barshay: Exception.

Nat Sobler—For Defts.—Cross

8473

Q. Did Rosen ever tell you that he had been to see the defendant Lepke at the Perfection Coat Front Company and there was told by him, or someone there, not to continue with certain customers in Pennsylvania? A. No.

Mr. Turkus: Objected to. Please don't you answer questions. No testimony at all that he ever made such a revelation to this man.

The Court: Utterly incompetent. Sustained—

8474

Mr. Turkus: Will your Honor caution this witness not to be so—

The Court: Don't interrupt the ruling. Sustained, the answer stricken and the jury is instructed to disregard it.

Mr. Barshay: That is all, sir.

Cross-examination by Mr. Turkus:

Q. Sobler, you know Lepke since 1926 or 1927, don't you? A. 1927 or 1928.

8475

Q. About June or July of 1940 Philly Buchalter took you to a lawyer's office, didn't he?

Mr. Barshay: I object to it, sir; first, on one ground—

The Court: What date was that?

Mr. Barshay: 1940.

The Court: What is the objection?

Mr. Barshay: First, Judge, he had a right to go to a lawyer's office,—there is nothing wrong about that,—just as much as he had a right to go to the District

8476

Nat Sobler—For Defts.—Cross

Attorney's office. I want that clearly understood.

The Court: Who is Philly Buchalter?

Mr. Barshay: Philly Buchalter is a brother of the defendant Louis Buchalter and his name is not Philip Buchalter; his name is Philip Kauver.

Mr. Turkus: Known as Philly Buchalter.

8477

Mr. Barshay: Kauver and he is a half-brother, I am informed, of the defendant Buchalter.

The Court: What is the use of fighting about that?

Mr. Barshay: As long as there is no wrong implication, that's all.

Mr. Turkus: We just want to fix the time.

The Court: The question is simply one of admissibility of evidence under the rules. The objection is overruled.

Mr. Barshay: Exception.

(Pending question read.)

8478

A. Yes, not to the lawyer's office.

Q. Where did he take you, what kind of an office? A. It is a business place.

Q. Business place? A. On 35th Street.

Q. Somewhere around 35th Street? A. That is right.

Q. And a statement was prepared then in June or July of 1940 for your signature, isn't that right?

Mr. Barshay: Where, please?

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8479

Mr. Turkus: In this place.

Mr. Barshay: Are you asking him the question or telling him?

Mr. Turkus: Yes, certainly.

A. No, sir.

Q. Did you sign a statement there? A. Yes.

Q. In the early part of 1941 you received a telephone call and then went to 60 Wall Street, Manhattan, didn't you? A. Right.

Q. And you spoke to the lawyer there about ten or fifteen minutes? A. More than that.

8480

Q. How long? A. About an hour.

Q. And then you went away? A. That is right.

Q. And you got another telephone call?

Mr. Barshay: Excuse me. Can we get the name of the lawyer in the record?

Mr. Turkus: Be patient.

Mr. Barshay: So there will be no misunderstanding.

Mr. Turkus: I want to get the chronology of events.

8481

The Witness: If the Judge allow me, can I tell the lawyer something? I was called to the lawyer's office; at least I was not kidnapped from the street like you do. That's all I got to say. Nothing to smile about it either.

The Court: If this—

The Witness: Trying to kidnap people from the street.

The Court: (To witness) Stop talking when the Judge is talking.

8482

Nat Sobler—For Defts.—Cross

The Witness: O.K.

The Court: If this happened when the witness for the People was testifying, there would have been an immediate motion for a mistrial.

(To witness) You just hold your tongue and you give direct answers.

The Witness: O.K.

The Court: Remember you are in court, not in a barroom.

8483

Proceed.

(Pending question read.)

Q. Then you went up to that same law office again, didn't you? A. That is right.

Q. Whom did you see on the first visit? A. Counselor right there (indicating) I don't know his name.

Mr. Climenko: Does he indicate me, Mr. Turkus?

Mr. Turkus: I don't know.

8484

Mr. Climenko: Well, ask him.

Q. Which one? A. Right there.

Mr. Barskay: This gentleman here (indicating Mr. Climenko)?

The Witness: That is right.

Q. And on the second time, which one did you see? A. I saw Mr.—both of them.

Q. Wegman and Climenko. You know the names, don't you? A. I do not.

Q. How many times have you been up to 60 Wall Street? A. Twice.

Q. And how long did you spend the second time? A. Maybe a half an hour or so.

Q. And in the hour and a half that you spent on the two occasions at 60 Wall Street, don't you know the names of the lawyers that you spoke to? A. I just got a bad head. I can't remember.

Q. You have been remembering about nine years ago without any books and papers, haven't you? A. Well, you know I am a sick man. I am a little upset now so just leave me alone.

8486

Q. Who brought you up to this law office? Let us get that. A. They called me to come up there.

Q. And you went up on a telephone call? A. That is right.

Q. Had not Philly Buchalter been over to see you first? A. I don't think so. No.

Q. Did anybody suggest that you go up there? A. No. They just called me, they want to see me about—

Q. Who invited you here today? A. A subpoena.

8487

Q. Who brought it? A. What?

Q. Who brought the subpoena? A. Gave me a subpoena.

Q. Who gave it to you? A. I don't know the man's name.

Q. Where did you get it? A. In my home.

Q. What address? A. 170 Bay 29th Street.

Q. How many times have you seen Philly Buchalter since the time he took you up to this

8488

Nat Sobler—For Defts.—Cross

place on 35th Street where you signed the statement? A. What is that?

Q. How many times have you seen Philly Buchalter since June or July of 1940 when you signed a statement in some place of business around 35th Street?

8489

Mr. Wegman: May I ask in order to avoid confusion that Mr. Turkus be instructed to use the right name of the gentleman he is referring to. It is Phil Kauver, not Buchalter.

Mr. Turkus: He is known as Buchalter as well as Kauver.

Mr. Wegman: Have you proven that, Mr. Turkus?

Mr. Turkus: Read the question.

The Court: The Court cannot remember which name is right. We know who is meant.

8490

Q. You know who I mean by Philly Buchalter, don't you? A. That is right.

Q. Is he in court? There he is, the fellow with the glasses, isn't he? A. That is right.

The Court: The man with the dark glasses?

Mr. Turkus: Yes.

The Court: Let him stand up and be identified. What is your name?

A. Philip Kauver, never was known as Buchalter.

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8491

Mr. Turkus: And he has added gratuitously that he is never known as Philly Buchalter.

The Court: Call him Kauver for the sake of peace.

Q. How many times have you seen that individual with his black glasses since June or July, 1940, when you signed the statement up in that place of business?

8492

Mr. Barshay: I object to the characterization of black glasses because medically they are an essential with him.

The Court: Then it is obvious to the Court the man is blind.

Mr. Barshay: Almost blind, sir.

The Court: He has little peep holes in the middle of opaque lenses.

Mr. Barshay: That is correct.

The Court: Which focus the vision directly on the lens of the eye and shut off the lateral rays. I assume that is correct.

8493

Mr. Turkus: I am not going into any medical discussion of the eye-glasses. He says he is Kauver. This man knows him as Philly Buchalter.

The Court: There is no harm meant by referring to the glasses.

Mr. Turkus: Of course not, merely being identified.

(Pending question read.)

A. That up to me to answer!

8494

Nat Sobler—For Defts.—Cross

Q. Yes. I believe I saw him once or twice but not more than twice.

Q. And was it about this case? A. First time it was about this case.

Q. Second time? A. Second time that the same, what I know about the case.

Q. And the second time when he saw you, was that when you went to 60 Wall Street? A. No, he did not give me any order to go to 60 Wall Street but he said "the lawyer will call you and go up and what you know about it."

8495

Q. You did not get any orders on that occasion, did you? A. No.

Q. Philly, this gentleman here, is in the trucking business, too, isn't he? A. Who is that?

Q. Philly, the man with the black glasses. A. Yes, in different line, not in the same line as we are.

Q. The first time you got orders though, didn't you? A. Orders what?

Q. Orders to go up to 35th Street. A. Didn't get any orders from anybody.

8496

Q. Not from Philly? A. No, he just told me "the lawyer wants to see you about what do you know about the case." That's about all.

Q. How many times have you been in the lawyer's office? A. I said twice.

Q. And once in 35th Street? A. That is right.

Q. That is three times? A. That is three times.

Q. And the man who gave you the subpoena, do you know his name? A. No.

Q. Had you ever seen him before? A. No.

Q. This morning when you came to court, did

you see Philly Buchalter or Philly Kauver? A. Not when I was outside, I didn't see him.

Q. You didn't? A. No.

Q. You live at 170 Bay 29th Street, in Brooklyn, don't you? A. That is right.

Q. And you live there with your wife, Lena Sobler, and your daughter May Sobler and a third daughter, a married daughter, is that right? A. That is right.

Q. Which female in the family is running a trucking business? A. My wife.

Q. Lena? A. That is right.

Q. And what is the name of the outfit that she is running? A. R. S. & Z. Express Company.

Q. Your wife is a housewife, isn't she? A. Never was a housewife.

Q. And where is this trucking business located? A. Right where I live.

Q. Where does it operate? A. In New York.

Q. Is it a sizable business? A. I don't know the word about sizable.

Q. How many trucks? A. Two trucks.

Q. And the income derived from that is dependent upon the good will of the industry, isn't it? A. I don't know what that means.

Q. How do you get your business? Don't you understand that? A. How we get our business?

Q. Yes. A. We got a little business left and she operates it. Since I got sick I left it all. I can't take care of it.

Q. The two trucks are being operated in the name of your wife as the R. S. & Z.? A. That is right.

Q. You have got truckmen working on the trucks? A. Yes.

8500

Nat Sobler—For Defts.—Cross

Q. Is it your business or your wife's? A. My wife's.

Q. She is getting an income from it? A. I suppose she does.

Q. You know nothing about the income? A. I don't pay any thought to it.

Q. You do not know whether your wife is making money or losing money? A. She could not be in business to lose money.

8501

Q. Do you know what accounts she has got? A. Not all of them but I know a few of them.

Q. How many do you know? A. Two or three.

Q. You only know two or three of the accounts? A. She got about three accounts.

The Court: We will continue at 1:30. Everybody kindly remain in order.

Gentlemen of the jury, please do not discuss the case, let nobody talk to you about it. Keep your minds open. The jury may go out of one door, the witness out of the other.

8502

Mr. Turkus: Will your Honor ask the witness to stay a moment?

The Court: Let the witness come back.

(The jury retired from the court-room.)

The Court: Why do you want the witness?

Mr. Turkus: I want a direction to the witness that he do not discuss the matters until his cross-examination is completed.

The Court: What good is that? The Court cannot follow the man up.

Nat Sobler—For Defts.—Cross

8503

Mr. Barshay: Counsel all consent to it and give their word that they will not permit anyone else to talk to him in any respect whatever and we request your Honor to instruct the witness accordingly.

The Court: The Court has nothing to do with it.

Mr. Wegman: If your Honor pleases, I want to make this statement in the absence of the jury and what I was about to do when I came up here at recess time was to request you to let me make a statement in the absence of the jury. The jury being out I should now like to ask your Honor to permit us to put on this record an offer of proof of what we expected to prove by the last question asked of the witness Larry Cooper, that is to say the question relating to his conversation with Joseph Rosen at the time Joseph Rosen quit his employment by Larry Cooper. As the record now stands there is nothing to indicate what was expected to be proved by means of that corroboration.

8504

8505

The Court: You cannot fill the hole in by doing it in a dilatory manner.

Mr. Wegman: The witness is still available.

The Court: Call him back and make your offer in open court. What the Court wants to direct attention to is this: This morning there was presented at chambers by a representative of one of the counsel for defense two subpoenas duces tecum—I think they were duplicates. They called

8506

Nat Sobler—For Defts.—Cross

8507

for police information as to traffic signals on the alleged route of rehearsal testified to by Bernstein as having been gone over a number of times prior to the alleged murder. The Court called the attention of this man to the fact that the subpoena was blind as to date, that apparently this would simply bring the present regulations or the present setup and not the setup as of the date of the alleged rehearsal, which is the only thing competent. An interpolation was then made by this man representing one of the counsel on the subpoena duces tecum but I told him that I did not think that it was adequate; I think it would tend to be confusing. I take it that what is wanted is what was the setup both as to arrow directions and as to traffic lights at the time of the alleged rehearsals of route. If you want to get a proper subpoena, I would suggest you read over what has already been signed and I will be glad to sign one which will avoid confusion.

8508

Defendants are remanded.

Mr. Wegman: If your Honor pleases, the witness Larry Cooper is still in the court-room. May I ask for a direction that he return?

The Court: That is a recess now. The defendants are being led out.

(A recess was thereupon taken to 1:30 P. M.)

Nat Sobler—For Defts.—Cross

8509

(AFTERNOON SESSION. TRIAL RESUMED.)

NAT SOBLER, resumed the stand and testified further as follows:

Cross examination by Mr. Turkus (continued):

Q. Don't look at Lepke, look at me.

Mr. Climenko: I move to strike out the remark and I ask that the jury be instructed to disregard it.

8510

The Court: It does not call for a ruling.

Mr. Climenko: I will ask for the withdrawal of a juror and the declaration of a mistrial on the ground of prejudice calculated to be created by the District Attorney.

The Court: Motion denied.

Mr. Climenko: Exception.

Q. On July 29, 1941, did you see this detective (indicating)? A. When?

8511

Q. On July 29, 1941, this year? A. Did I see this gentleman here?

Q. Yes. A. I think I did.

Q. Where is the Svirsky Clothing? A. Fifth Avenue.

Q. What street? A. 16th Street.

Q. Did you see this detective outside of the Svirsky Clothing on July 29, 1941? A. I said I did.

Q. Did you have a talk with him? A. A few words, yes, sir.

8512

Nat Sobler—For Defts.—Cross

Q. Is that the detective who accompanied you to the District Attorney's office? A. That is right.

Mr. Turkus: For the record, will you state your name, please?

Person Addressed: Frank S. Grey, Shield No. 475, District Attorney's office, Kings County.

8513

Q. Outside of this Svirsky Clothing Company, you were waiting for Plotkin to come and unload material he had on the truck, isn't that right?

A. Yes, sir.

Q. One of the R.S.Z. trucks? A. Yes, sir.

Q. That detective was waiting for you, wasn't he? A. I don't know if he was waiting for me, but he was waiting there.

Q. He had a conversation with you, Detective Grey? A. No conversation at all.

Q. Didn't he tell you he wanted you to accompany him to the District Attorney's office? A. That is right.

8514

Q. Didn't you say you were busy, that you had some \$100,000. worth of merchandise to take off the trucks? A. No, sir. I told him that I was a sick man, that I could not ride in the subway.

Q. When you told him you were a sick man, you could not ride in the subway, he took you in a taxicab? A. Yes, sir.

Q. He waited until your business was over? A. He did not.

Q. He did not? A. No, sir.

Q. He took you down in a taxicab to the Dis-

trict Attorney's office and himself paid \$1.40 for the taxicab, didn't he? A. I don't know what the amount was.

Q. You did not pay? A. No, sir.

Q. And after the questioning was over in the District Attorney's office, you were taken home to your house by automobile? A. That is right.

Q. And the automobile was driven by a detective? A. I don't know if he was a detective. It was driven by a chauffeur.

Q. That is the incident you were talking about when you made that remark to the jury? A. Yes, sir, that is right.

8516

Q. Now, Plotkin was there with an R.S.Z. truck, wasn't he? A. Just a minute, Plotkin was a foreman of my wife's business, and they did not have any business to take him away from there or talk to him. They had no business. That is what I told him.

Q. Enough of the volunteering— Plotkin was the man on the truck, the man who came up with the R.S.Z. truck? A. Yes, sir.

Q. Plotkin did not go with you in the taxicab? A. No, sir.

8517

Q. He came over by himself after the day's work was over? A. Yes, sir.

Q. Where was your brother-in-law's place of business at or about the time of the stoppage in 1932? A. On Washington Place.

Q. What is your brother-in-law's name? A. Sam Richter.

Q. He was in business with Dutch Schultz, wasn't he?

Mr. Barshay: I object.

8518

Nat Sobler—For Defts.—Cross

The Witness: He might have been—
Mr. Barshay: Please keep quiet.

Q. Look at me, don't look over there.

Mr. Barshay: Don't let him look, my face is not as nice as Mr. Turkus'.

Mr. Turkus: It is not a question of whose face is nice.

8519

Mr. Barshay: I object to it as wholly immaterial, who his brother-in-law was. It does not affect his credibility.

The Court: It does not. Objection sustained.

Mr. Turkus: There is something I want to lead to.

The Court: I would rather you lead to it first.

Q. You are a rich man, you would object to that, would you?

8520

Mr. Barshay: I object. I object, not to his being a rich man, but I object to two questions being asked.

Q. Well, we will sever them. You are a rich man? A. I don't know about it, maybe you know about it. I don't know about it.

Q. You don't know whether you are a rich man? A. I would like to know what you call a rich man.

Q. How much money have you got? A. (Witness remains mute.)

Nat Sobler—For Defts.—Cross

8521

Mr. Turkus: All right, his answer is a shrug.

The Court: It is immaterial, anyway.

By the Court:

Q. Mr. Witness, have you stopped chewing gum? A. I am sick with my heart and I have to take something to stimulate.

Q. You keep chewing gum all the time? A. No, sir, once in a while I have to have it.

8522

Q. That is chewing gum? A. Yes, sir.

The Court: Now you can talk clear.

By Mr. Turkus:

Q. At the time or about the time of the stoppage did you talk to your brother-in-law, Sam Richter? A. I spoke to him lots of times.

Q. Did you have any talk with your brother-in-law together with Dutch Schultz? A. No, sir.

Q. After the stoppage was over, you had a business, didn't you? A. Yes.

8523

Q. We will come to that in a minute— Now, are you presently on disability insurance? A. Yes, sir.

Q. Are you collecting money every week? A. Yes, not every week.

Q. How often? A. Every month.

Q. This business you got in your wife's name, that was a deal you put over on the insurance company, wasn't it?

Mr. Barshay: I object. I object to the form of the question.

8524

Nat Sobler—For Defts.—Cross

The Court: Objection overruled.

Mr. Barshay: Exception.

By the Court:

Q. Yes or no? A. I did not take care of any business.

By Mr. Turkus:

8525

Q. You are there every day running the business, aren't you? A. No, sir.

Q. Your wife stays home, she is home now, isn't she? A. You know more about it than I do.

Q. Wasn't your wife home this morning? A. I don't know.

Q. You are collecting about \$2,000. a week on these trucks you are running with the R.S.Z., aren't you? A. \$1900., not \$2,000.

Q. That makes a net profit of three or four hundred dollars a week? A. It is not what—

8526

Q. (Interrupting.) When you take in about \$2,000., that means a net profit of about three or four hundred dollars a week? A. I don't know nothing about my wife's business.

Q. You don't know a thing about it? A. No, sir.

Q. You don't know where she banks her money? A. No.

Q. You don't know what checking account she maintains? A. What do you mean? What bank account?

Q. Yes. A. No, sir, I don't think she has got any.

Nat Sobler—For Defts.—Cross

8527

Q. You live at home? A. Yes, sir.

Q. You see your wife every day? A. Yes, sir.

Mr. Barshay: I object to this line of inquiry as collateral and he is bound by the answers he has received.

The Court: Objection overruled.

Mr. Barshay: Exception.

Q. You and your wife are not separated, are you?

8528

Mr. Barshay: I object. That does not affect his credibility.

Q. On July 29, 1941, when Detective Grey brought you up to the District Attorney's office in a taxicab, weren't you supervising the unloading of merchandise for the Svirsky Clothing?

Mr. Barshay: Objected to.

The Court: Objection overruled.

A. What was I doing, supervising?

8529

Q. Yes, bossing it? A. No, sir, I stood about a half a block or so away.

Q. A half a block away from the Svirsky Clothing? A. Yes, sir.

Q. How many days a week did you spend a half a block away from the accounts your wife, you say, runs? A. It all depends.

Q. How many times a month? A. I don't go there for no accounts.

Q. You are in the clothing district all the time, aren't you? A. When I feel I would like to take a little walk.

8530

Nat Sobler—For Defts.—Cross

Q. You go there for your health? A. Yes, sir, just to see my old friends.

Q. That is the only business you had in that clothing and garment district? A. I had not any.

Q. You just go there to see old friends? A. Yes, sir.

Q. Now, weren't you the complainant before the impartial chairman against the employe Plotkin, who drives a truck for the R.S.Z.? A. No, sir, not me.

8531

Mr. Barshay: I object. That does not affect his credibility, whether he was a complainant or not.

The Court: What is an impartial chairman?

Mr. Turkus: That is somebody at the Labor Board. I will withdraw it in that form.

Q. You know what an impartial chairman is, don't you? A. Yes, sir.

8532

Q. Speak up. Don't you? A. Yes, sir.

Q. Speak up just as loud as you did for the counsel for Lepke. What is an impartial chairman? A. He is an adjuster of differences.

Q. Disputes? A. Yes, sir.

Q. Between employer and employe? A. Yes, sir.

Q. Your wife did not appear before the impartial chairman, did she? A. She did.

Q. You did, didn't you? A. No, sir, my wife.

Q. You did not appear at all? A. No, sir.

Q. Wasn't it you that gave testimony before the impartial chairman that Plotkin would not stay on the truck? A. My wife did.

Q. You were not there before the impartial chairman? A. No, sir. I was four floors below.

Q. Where was that building? A. I think it was 22.

Q. 22 what? A. 17th Street.

Q. Were you there four floors below seeing old friends in business? A. Yes, sir.

Q. You were there just at the time the complaint was being heard against Plotkin? A. Yes, sir.

Q. That was a coincidence? A. Yes, sir.

8534

Q. How much worth of merchandise was in the R.S.Z. truck July 29, 1941, when Detective Grey accompanied you in a taxicab to the Brooklyn District Attorney's office?

Mr. Barshay: I object. That is too far afield and has nothing to do with his credibility. That is with the insurance company.

Mr. Turkus: That is for the jury to find out what kind of an individual we are dealing with.

The Court: Objection overruled.

8535

Mr. Barshay: Exception.

(Question repeated by reporter.)

A. I do not know.

Q. Did you tell Detective Grey there was \$300,000. worth of merchandise on that truck?

A. I told the detective the car there must have a load of stuff and he could not take a man away from his work during the day.

Q. Did you say \$300,000. worth? A. I don't know whether it was \$300,000. worth or \$75,000.;

8536

Nat Sobler—For Defts.—Cross

there was plenty of merchandise there, I told him. I said to leave the man alone until he finishes his work on the truck.

Q. The man was left alone until that work was finished? A. Yes, sir, after my plea for him.

Q. Nobody ever did any pleading to bring you up to 35th Street and sign a statement, did they?

8537

Mr. Barshay: I object. He had as much right to go to 35th Street as to your office.

The Court: Objection sustained.

Q. Isn't this business you say is in your wife's name a set-up so as to defraud the insurance company and getting all these monthly checks?

Mr. Barshay: I object.

The Court: He has never said what the monthly checks are. They may be small or large.

By the Court:

8538

Q. What are the monthly checks? A. \$12.50 a week.

By Mr. Turkus:

Q. Answer the question.

The Court: The previous objection placed to that same question was sustained. The ruling stands.

Q. In 1933, you were actively in the clothing

trucking business, weren't you? A. Up to some part of 1933.

Q. Do you know Joey Miller? A. No.

Q. Do you know Barney Gold? A. No.

Q. See if this does not refresh your recollection— Were there a couple of loft thieves whom you knew? A. I did not know no thieves, for your information.

Q. Didn't you give them a tip-off on your own customers so these loft thieves could go in and burglarize places? A. Your Honor, can I say a word? What am I brought here for? As a thief?

8540

Q. You are brought here to testify. A. You called me a thief.

Q. Don't look at Lepke. Look here. A. I am looking right at you. I did not give any tip-off to anybody.

Q. Did you live in Passaic, New Jersey, for ten year, from 1922 to 1932? A. I did not.

Q. You did not? A. No, sir.

Q. When did you live in Passaic, New Jersey? A. From 1922 to 1925, and then I moved back to New York, and kept in New York until 1927.

8541

Q. From Passaic, New Jersey, didn't you move to Elizabeth, New Jersey, for three years? A. That is right.

Q. Wasn't that three years from 1932 to 1935? A. Yes.

Q. Didn't you sign an affidavit in the District Attorney's office on July 29, 1941? A. Here?

Q. Yes, in Brooklyn? A. Yes, sir.

Q. Didn't you swear in that affidavit that you lived in Passaic, New Jersey, for about ten years, from 1922 to 1932? A. I lived about ten years.

8542

Nat Sobler—For Defts.—Cross

Q. Did you say that in the District Attorney's office under oath? A. What is that?

(Question repeated by reporter.)

The Witness: Yes, sir, I lived in 1925 and I went back to New York and stayed in New York until 1927; then I came back to Elizabeth—Passaic, New Jersey. From Passaic, New Jersey, I came to Elizabeth, New Jersey, and I stood there until 1933. How long is that?

8543

Q. Didn't you state you lived in Passaic, New Jersey, from 1922 to 1932, for ten years? A. I might did, but I am incorrect.

Q. Did you say that from Passaic, New Jersey, you came to Elizabeth, where you lived for three years, from 1932 to 1935? A. That is right.

Q. And from 1935 on you lived in Brooklyn? A. One year, yes, sir.

Q. Don't you live in Brooklyn now? A. I live, yes.

8544

Q. Haven't you lived in Brooklyn since 1935? A. 1935 I moved to Brooklyn.

Q. You have been living in Brooklyn ever since? A. No. From Elizabeth I went down to the Bronx. I lived one year there.

Q. With the exception of one year in the Bronx, have you lived in Brooklyn ever since 1935? A. Yes, sir.

Q. With the exception of one year in which you were in the taxicab business, you have been in the clothing trucking for twenty-three years? A. That is right.

Q. And your specialty was trucking in New Jersey? A. Yes, sir.

Q. Didn't you swear in the District Attorney's office, "My specialty was trucking in New Jersey and I was particularly active in the New Jersey field and familiar with it"? A. Yes, sir, but when I—

Q. Do not volunteer anything.

Mr. Barshay: I object. The witness ought to be allowed to explain his answer.

8546

The Witness: When I started this business in 1908 I started in New York and I had been around New York from 1920, nothing less. In 1920 or 1921 I started for New Jersey. That is the way it happened.

By the Court:

Q. Up to 1935 did you make any income tax report to the State of New York? A. Well, no, I was a Jersey man up to 1935.

8547

Q. When did you start to make any income tax report? A. 1933, when I moved back to New York.

Q. You mean after you left Elizabeth? A. Yes, sir.

Q. Never before that? A. No, sir.

Q. And on the Federal income tax report you only stated your address? A. Yes, sir.

Q. Before that as New Jersey? A. That is right.

Q. Including the Elizabeth sojourn? A. Yes, sir.

8548

Nat Sobler—For Defts.—Cross

By Mr. Turkus:

Q. Was your affidavit in the District Attorney's office that you were a specialist in New Jersey trucking true? A. Yes, sir.

Q. From 1922 to 1925, were you a partner with Louis Cooper and Morris Bluestein in the New Jersey trucking business, known as the Garfield Express? A. That is right.

8549

Q. After you were in that business for about three years, that was a very substantial business, wasn't it? A. Yes, sir.

Q. And in your opinion, that business, as an expert, was worth half a million dollars, isn't that so? A. That is right.

Q. Now, during 1925 Louis Cooper, Morris Bluestein, your partners, kicked you out of the business, didn't they? A. Yes, sir.

Q. And you were paid five or six thousand dollars for your share? A. That is right.

Q. And Morris Bluestein and Louis Cooper remained as partners together? A. That is right.

8550

Q. Several months after that Bluestein got kicked out of the Garfield Express, didn't he?

Mr. Barshay: I object. That has nothing to do with this man's credibility and is not binding on this defendant.

The Court: If he was not in business?

Mr. Barshay: He said he was already out of business.

The Court: Objection sustained.

Q. Do you know when Louis Cooper and Lepke

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8551

became partners in the Garfield Express? A. I don't know.

The Court: When did he say he left the Garfield?

Mr. Turkus: 1925.

Q. Several months after you were kicked out of the Garfield Express by Cooper and Bluestein, your partners in it, Bluestein left the Garfield, didn't he? A. That is right.

8552

Mr. Barshay: Objected to as immaterial.

The Court: Sustained. Don't repeat.

Mr. Turkus: I am just leading up to something in cross-examination.

The Court: The previous objection was as to when Bluestein got out.

Mr. Turkus: Not got out, but kicked out.

The Court: After he was kicked out; so he would not know, only by hearsay.

Mr. Turkus: I will not press it.

8553

Q. In 1925, do you know of your own knowledge if Louis Cooper was the sole owner of the business, the Garfield Express?

Mr. Barshay: I object. He said he got out and after that, as your Honor suggested, is hearsay.

The Court: Objection overruled. He was asked if he knows of his own knowledge who was the sole owner.

8554

Nat Sobler—For Defts.—Cross

Mr. Barshay: Exception.

The Court: That Cooper was the sole owner in 1925?

The Witness: At the time I left he was partners with Morris Bluestein.

Q. How long after did Bluestein leave? A. I don't know.

Q. How many months? A. I don't know, a short time, maybe a year or so, I could not say.

8555

Q. Did you swear in the District Attorney's office that several months after that, referring to the time you were kicked out, that Bluestein went out of the Garfield Express and Louis Cooper remained the sole owner of the business?

A. What did I swear? When I leave, then you ask me how long Morris Bluestein stayed with Louis Cooper?

Q. Didn't you say several months? A. Several months, I don't know how long he stood.

Q. And after that Louis Cooper became the sole owner? A. I don't know who became the sole owner. I was not there.

8556

Q. Didn't you say that in your affidavit? A. I don't know.

Q. Read the second paragraph, page two, and see if it refreshes your recollection. A. I have not got my glasses, I cannot read.

Q. I will read it for you.

Mr. Barshay: Go ahead and read it.

Mr. Turkus: "During 1925 Louis Cooper and Morris Bluestein kicked me out of business and I was paid five or

Nat Sobler—For Defts.—Cross

8557

six thousand dollars for my share." Is that right?

The Witness: That is right.

Q. Morris Bluestein and Louis Cooper remained partners? A. That is right.

Q. "Several months after that Bluestein went out of the Garfield Express and Louis Cooper remained the sole owner of the business"? A. That is something I cannot answer; I don't know who remained.

8558

Q. Up to that point everything is right? A. Yes, sir.

Q. Of your own knowledge, you know this, don't you, that after Bluestein left the Garfield Express he went into the clothing trucking business under the name of the New York and New Jersey Clothing Transportation Co., Inc.? A. No, sir.

Q. He did not? A. No, sir.

Q. Didn't you state that in your affidavit in the District Attorney's office? A. If you will let me explain, I will.

8559

Q. Just explain whether you swore to that in the District Attorney's office. A. The District Attorney just got hold of people and gave them a break—I will explain it right. I didn't go to school. I don't know what it is all about. I can explain you how that thing happened.

Q. I am just asking you. Didn't you say in the District Attorney's office, in the third paragraph, page two, of that affidavit which you signed each sheet of and initialed corrections, that after Bluestein went out of the Garfield Express he went into the clothing trucking busi-

8560

Nat Sobler—For Defts.—Cross

ness under the name of the New York and New Jersey Clothing Transportation Company, Inc., and "I went in the taxicab business and went broke in that business about two years later."! Didn't you say that in the District Attorney's office under oath? A. If you let me explain—

Q. Explain yes or no. A. You have to explain me that. I did not answer that way. I did not understand it. I can explain what it is if you give me a chance. I will explain everything.

8561

Q. You did not understand when you signed that in the District Attorney's office? A. Not so well I did not understand it.

Q. Did you go in the taxicab business and go broke in that business about two years later? A. I went broke in '25.

Q. Did you go in the taxicab business? A. Yes, sir.

Q. You said that in your affidavit? A. Yes, sir.

Q. You went broke in the taxicab business? A. Yes, sir.

8562

Q. You understood that affidavit? A. Yes, sir.

Q. After you went broke in the taxicab business, didn't you meet Bluestein in the clothing district in Manhattan? A. Yes, sir.

Q. You told that in your affidavit? A. Yes, sir, that is fine.

Q. That is the same Bluestein, who, with Cooper, kicked you out of the Garfield Express? A. Yes, sir.

Q. In the clothing district in Manhattan, didn't Bluestein ask you how you were doing—rather,

what you were doing—and you told him that your taxicab business had broken up and you were doing nothing? A. Yes, sir.

Q. Did you understand that when you said it in your affidavit? A. Yes, sir.

Mr. Barshay: I object to this line of inquiry. It has nothing to do with the witness' credibility.

The Court: I don't know what it is leading to.

8564

Q. Didn't Bluestein suggest that you go back in partnership and that you join him in the New York and New Jersey Transportation Company? A. Not at that time, there was no New York and New Jersey in existence. When Bluestein took me in we organized the New York and New Jersey Clothing Transportation Company.

Q. At any rate, Bluestein suggested that you come back as a partner? A. Yes.

Q. And you went into a business known as the New York and New Jersey Transportation? A. No, sir, we established that about a week or so later.

8565

Q. A week after the conversation? A. Yes, sir.

Q. Then in the District Attorney's office you misunderstood what you said, that Bluestein suggested that you go back in partnership under the joint name of the New York and New Jersey Transportation Company, which I did? A. There was no New York and New Jersey at that time.

8566

Nat Sobler—For Defts.—Cross

Q. The New York and New Jersey Transportation Company, which you ran with Bluestein, that was a good business, wasn't it? A. Yes, sir.

Q. You ran four or five trucks? A. That is right.

Q. You did most of the trucking in New Jersey, didn't you? A. Yes, sir.

Q. You handled all lines of clothing? A. Yes, sir.

8567

Q. You had what is known in the trade as a free hand? A. Yes, sir.

Q. You understood that when you said that in your affidavit? A. Yes, sir.

Q. Some time around the latter part of 1930, Martin Kelly and Joe Rosen were doing a clothing trucking business in New Jersey? A. Yes, sir.

Q. You know that they were your competitors? A. Yes, sir.

Q. They were competing with you and Bluestein? A. Yes, sir.

8568

Q. They were trying to win over houses from you? A. Yes, sir.

Q. And you said to Bluestein about merging with Kelly and Rosen? A. Yes, sir.

Q. To end the competition? A. Yes, sir.

Q. You understood all that when you said that in the District Attorney's office? A. Yes, sir.

Q. Kelly and Rosen came in as partners with you and Bluestein? A. Yes, sir.

Q. And you continued doing business under the name of the New York and New Jersey Transportation Company? A. That is right.

Q. In the early part of 1931 Kelly pulled out of the business with his trucks? A. Yes, sir.

Q. That left Bluestein, Rosen and you still in business as the New York and New Jersey Transportation Company? A. Yes, sir.

Q. You understood that when you said it in the District Attorney's office? A. Yes, sir.

Q. After Kelly pulled out, Rosen, Bluestein and yourself continued in the New York and New Jersey Transportation Company? A. Yes, sir.

Q. Now, you had New Jersey, didn't you? A. Yes, sir. 8570

Q. New Jersey, with all its lines of trucking, with a free hand? A. Yes, sir.

Q. That was the real paying part of the business? A. Yes, sir.

Q. You understood that when you said that in the District Attorney's office? A. Yes, sir.

Q. And you were using three or four trucks in the New Jersey business, weren't you? A. Yes, sir.

Q. And with three or four trucks, you were doing your usual net, when you operated three or four trucks? A. It all depends upon the season. That is impossible. 8571

Q. If it is impossible, tell me what you were netting, you and Bluestein and Rosen? A. You mean from their business there?

Q. Yes, in 1931. A. We netted around \$3,000, or so.

Mr. Barshay: I object, unless the time is set in 1931.

Q. When was it that you and Bluestein and

8572

Nat Sobler—For Defts.—Cross

Rosen were having a free hand in the State of New Jersey, trucking all lines of clothing, and operating three or four trucks in the New Jersey business? A. 1931.

Q. What part of 1931? A. It must have been the latter part of 1931, for 1932—the latter part of 1931.

8573

The Court: When this witness spoke of the net earnings for the trucks, did you mean roughly—he did not say by the week, or the month, or the year.

Q. What is the estimate that you made at that time? A. About a \$1,000 a month.

Q. Net? A. No, sir, not net, gross.

Q. You had New York accounts, didn't you? A. Very little.

Q. In the New York accounts you had but one truck? A. Didn't have no trucks.

8574

Q. Didn't you say in the District Attorney's office the New York accounts were just about holding their own and they had one truck? A. I used to do it with my own car. I only had a couple and I used to do it with my own car.

Q. Did you say in your affidavit that the New York accounts were just about holding their own and you needed about one truck? A. Yes, sir.

Q. Did you understand it when you said it? A. Yes, sir.

Q. Did you understand, when you said it in the District Attorney's office, after Kelly pulled out, that Rosen, Bluestein and I continued as the New York and New Jersey Transportation Company, the real paying part of the business

was in New Jersey, handling all lines with a free hand, we had over three or four trucks in the business? A. Yes, sir.

Q. Did you understand it when you said it? A. Yes, sir.

Q. You also had Pennsylvania business? A. No, sir. I want to correct that.

Q. What? A. Four trucks had been rolling in Pennsylvania and New Jersey.

Q. Before you start in correcting, let us see what you testified to— The fact is that you had Pennsylvania accounts? A. No, sir.

Q. Those were accounts that Joe Rosen brought in, weren't they? A. Yes, sir.

Q. Those were the accounts that Joe Rosen was seeking to get, Pennsylvania accounts? A. Yes, sir.

Q. And Rosen did not put any money in this business? A. No, sir.

Q. Of course, not— He came in with the Pennsylvania accounts, trying to get the Pennsylvania business for the New York and New Jersey? A. Yes, sir.

Q. The Pennsylvania business used to have four trucks, didn't it? A. Four trucks were used all around.

Q. Didn't you say in the District Attorney's office, under oath—and I call your attention to page three, where you crossed out the word "two" and wrote "to" in it. I will read it: "The Pennsylvania business required four trucks. It was not a paying business." Did you say that under oath? A. I said that, but the four trucks were running all around; we did not have no special trucks for Pennsylvania.

8578

Nat Sobler—For Defts.—Cross

Q. I am not asking you for an explanation. Didn't you say in the District Attorney's office, as follows—this is the whole paragraph: "After Kelly pulled out, Rosen, Bluestein and I continued as the New York and New Jersey Transportation Company"? A. Yes, sir.

Q. "The real paying part of the business was in New Jersey, handling all lines with a free hand"? A. That is right.

8579 Q. You were using three or four trucks in that business? A. That means the business on the whole.

Q. That the New York accounts were just about holding their own and needed but one truck? A. Yes, sir.

Q. Do you remember saying the Pennsylvania business required four trucks, and was not a paying business? A. Yes, sir.

Q. That you remember was in the District Attorney's office? A. Yes, sir.

8580 Q. Didn't you swear under oath in the District Attorney's office that by discontinuing the Pennsylvania business there was a good living for Rosen, Bluestein and myself? A. Yes, sir.

Q. Was that true? A. Yes, sir.

Q. The New Jersey business, of all lines, was commonly called in the trade a "gentleman's business"? A. Yes, sir.

Q. And that operated three or four trucks and was a good paying business? A. Two trucks.

Q. Didn't you say in the District Attorney's office, under oath, signing each page and swearing to the final page: "The New Jersey business of all lines was commonly called in the trade the gentleman's business and operated three or

four trucks and was a good paying business"?

A. I did.

Q. Do you want to correct that? A. Yes, sir.

Q. What is the correction? A. The correction is that we never ran more than four trucks.

Q. It was known in the trade as a gentleman's business? A. Yes, sir.

Q. And it was a good paying business? A. Yes, sir.

Q. Didn't you say this under oath—look at me—"To discontinue the Pennsylvania business would mean to cut down most of the expenses and leave us with the cream of the business"? A. Yes, sir.

Q. Now, Rosen was trying to branch out into a new field in Pennsylvania? A. Yes, sir.

Q. He used to go there and try to get business? A. Yes, sir.

Q. If you got any business in Pennsylvania it meant the trucking business would not stay in New York any more, is that right?

Mr. Barshay: I object to that as speculative on his part.

A. That was Mr. Rosen's idea.

Q. That was what he was working on? A. Yes, sir.

Q. That was the idea he propounded with great faith and sincerity?

Mr. Barshay: I object to the characterization.

The Court: Objection sustained.

Q. In 1932, in that general stoppage, when all

8584

Nat Sobler—For Defts.—Cross

the clothing truckers were stopped, Max Rubin came to you and told you the New York and New Jersey Transportation Company would have to stop on a certain day? A. That is not so.

Q. You understood that? A. Yes, sir.

8585

Q. Didn't you say in the District Attorney's office under oath, right above your signature, on page three of your affidavit of July 29, 1941: "That in 1932 before the general stoppage when all the clothing truckers were stopped, Max Rubin came to me and told me that the New York and New Jersey Transportation Company would have to stop on a certain day"? Didn't you say that? A. No.

Q. You did not say that? A. No, sir. You tried to make out in a different way.

Q. See if you can see your signature without glasses. A. My signature is all right, I know it, but I cannot see, I have no glasses.

Q. You cannot see your signature? A. I can see the signature but I cannot read it.

8586

Q. You say you did not say that? A. I mean different.

Q. Let us hear what you meant. A. I mean—

Q. Wait a minute, I will find out what you mean. Was there a general stoppage? A. Right.

Q. Did you see Max Rubin before the general stoppage? A. Right.

Q. That is all right, as far as that goes? A. Yes, sir.

Q. Did Max Rubin see you and talk to you about the stoppage? A. Yes, sir.

Q. Did he tell you that the New York and the New Jersey Transportation Company would have to stop? A. No, sir.

Q. That part is not right? A. No, sir, that part is not right.

Q. Did the New York and New Jersey Clothing Transportation Company stop in that stoppage? A. Right.

Q. Did you understand this thing you said under oath in the District Attorney's office—"Some time in July, 1932, a general stoppage was called and trucks of the New York and New Jersey Transportation Company also stopped"? A. Right.

8588

Q. You understood that? A. Yes, sir.

Q. That was the time you were talking of your brother-in-law, Richter, about the stoppage? A. My brother-in-law don't have anything to do with any stoppage.

Q. Did you consult him for advice? A. No, sir.

Q. You did not see your brother-in-law with Dutch Schultz about this matter? A. You insult me. If you continue that, I am getting off the stand. Either talk as a person or I will get off the stand. I am a sick man. I cannot take it any more. Do you think you are telling that to me?

8589

Q. I think I understand with whom I am talking. A. I object to this. Who do you think you are, telling that to? Are you bringing me in with gangsters—Dutch Schultz—who knows him? Perhaps, you know him. I don't know him. Who the hell do you think you are?

(At this point the witness rises from his chair and starts to leave.)

The Court: Sit back in your chair.

The Witness: You mix me up with

8590

Nat Sobler—For Defts.—Cross

Dutch Schultz— Where do you come in to say that?

The Court: Sit back in your chair, compose yourself.

The Witness: I work for my living all my life; you have no business to call me Dutch Schultz. I don't know who Dutch Schultz is. Let me get out of here.

(Witness again rises from the chair and attempts to leave.)

8591

The Court: The witness is obviously in too nervous a state at the present moment to properly continue cross-examination.

The Witness: What did you ever give me for Dutch Schultz?

The Court: You are to blame for it, you are working yourself up to that state. Counsel has a right to ask questions, but you have gotten yourself in such a nervous state that I am going to allow you to rest for five minutes to pull yourself together, after which you can come back here. I will stand for no more of these outbursts. Listen to the questions and answer them, but do not volunteer information. We will take a recess for ten minutes. Lie down for ten minutes and pull yourself together. The defendants will be remanded.

8592

(To the Jury:) Gentlemen, we will take a recess for about ten minutes. Do not discuss the case or allow anyone to talk to you in the interim.

(Defendants remanded.)

The Court: (After jury leaves room) You might state on the record something

Nat Sobler—For Defts.—Cross

8593

that did not appear. The witness was trembling from head to foot and in no condition to proceed at the moment with his examination.

(The jury returned to the court-room.)

NAT SOBLER, resumed the stand:

8594

The Court: The witness' nervous condition must be taken into consideration. It is quite important to maintain a placid attitude in the cross-examination and it is just as important, ever more important, that the witness shall not permit himself to become riled and work himself up into a state by going off the handle and saying things that are not called for by the questions.

Mr. Turkus: May I respectfully state, your Honor, that that may carry an implication on the record.

8595

The Court: Nervousness to the point of trembling as the witness was, is largely a matter of gradation. All emotions work up that way.

Mr. Turkus: I just want to be sure the record does not carry an implication that there was something—

The Court: Let us say nothing more about it. We have the man's age and apparent nervous condition in mind.

Mr. Turkus: Shall I continue?

The Court: Yes.

8596

Nat Sobler—For Defts.—Cross

By Mr. Turkus:

Q. While the stoppage was on, Sobler, New York and New Jersey Transportation Company trucks did not roll, did they? A. No.

Q. Branch Storage rolled, didn't they? A. Yes.

Q. All other trucks did not roll? A. I don't know how many was rolling and how many not.

8597

Q. While the stoppage was on, isn't it true that Joe Rosen came to you one Saturday morning and told you that he was getting a job with the Garfield Express? A. Right.

Q. You said that in your affidavit? A. That is right.

Q. You understood that? A. That is right.

Q. Isn't it also true that you said to him on that occasion, "How in the world can you do that? I know Louis Cooper won't give you a job"? A. That is right.

Q. Did you say that in your affidavit? A. Yes.

Q. And you understood that? A. Yes.

8598

Q. And isn't it true that after that Rosen said either Lep or Louis Buchalter—which name he called him you cannot exactly say but it was one of the two—"is Cooper's partner and he is giving me the job"? A. Right.

Q. And you said that—

The Court: Wait a minute. There is no objection. Is that competent?

Mr. Turkus: Yes, it is. That was brought out on direct.

Mr. Barshay: I have no objection to it, your Honor.

The Court: All right.

Nat Sobler—For Defts.—Cross

8599

Q. So it was true, isn't it, and you understood that when you said it in your affidavit? A. That is right.

Q. So it was on one Saturday morning during the stoppage that Rosen told you that either Lep or Louis Buchalter was getting Rosen a job with the Garfield and that Lep or Louis Buchalter was Cooper's partner? A. That is right.

Q. Now, on that very Saturday, isn't it true that Max Rubin told Bluestein and you that you both were going to have the New Jersey knee pants business and the New York accounts that you had? A. Not on that Saturday.

8600

Mr. Barshay: The man has answered but when I get up, do not answer.

Q. What Saturday and when?

Mr. Barshay: I object to anything Mr. Rubin told this man, not binding on the defendant.

The Court: Sustained.

8601

Mr. Turkus: This is part of the direct proof and in contradiction of what was brought out on the direct testimony of this witness.

The Court: Mr. Turkus, when the defense was on that point and you did not object, the Court went out of its way, if you will recall, to suggest it was an objectionable point and you did not take advantage of it and then the Court said, to avoid being misunderstood as doing the District Attorney's work, the Court would

8602

Nat Sobler—For Defts.—Cross

not rule unless there was an objection. Do you recall that?

Mr. Turkus: I do.

The Court: I cannot accept your silence at that time as the basis for making incompetent evidence, on cross, competent.

Mr. Turkus: I sat here and permitted that—

8603

The Court: The Court has to watch all the time and there are points when the Court must interrupt regardless of whether there is objection or not in order to see that the trial is fairly conducted.

Mr. Turkus: I know, your Honor, but the tenor of his direct testimony is that Rosen walked out of a business in great glee or satisfaction and I want to show by his testimony what the true state of affairs was.

8604

Mr. Barshay: If your Honor pleases, I object to the characterization of Mr. Turkus. There was no description of the manner in which Rosen walked out. There was no description of glee of any kind. He just said to this man he was going to work for Garfield, which is consistent with the State's case, and he has not shown anything inconsistent in this affidavit.

The Court: He said he was getting a job with the Garfield Express so was going to quit.

Mr. Barshay: That is it.

The Court: Objection is sustained.

Mr. Turkus: I am going to show it was

Nat Sobler—For Defts.—Cross

8605

not a quitting. I want to show the true situation in that respect.

The Court: I don't care who is on trial—

Mr. Turkus: All right.

The Court: It makes no difference. Nobody can have it counted against him that somebody else behind his back says something to somebody else still.

Q. After Rosen was out of the New York and New Jersey, did you and Bluestein continue in business and have the New Jersey knee pants business and the New York accounts which you had formerly had? A. Right.

8606

Q. The knee pants business was the slavery business, wasn't it? A. Right.

Q. And the rest of the New Jersey business was the gentlemen's business, isn't that right? A. Right.

Q. The gentlemen's business consisted of coats, pants, and vests; isn't that right? A. That is right.

8607

Q. On coats, pants and vests—

The Court: What is slavery business?

Mr. Turkus: I am going to bring that out in a minute.

Q. Coats, pants, and vests, how much do you get for trucking that? A. By piece.

Q. How much per piece? A. Well, let us say for a coat we get about four cents, for a vest we get a cent and a half or two cents—all de-

8608

Nat Sobler—For Defts.—Cross

pende what the contractor—and for pants we get about two cents, we get for pants.

Q. You said the knee pants business was the slavery end of the business. A. That is right.

Q. What do you get for knee pants? A. About a cent.

Q. And that is in big bulk, isn't it? A. Yes.

Q. That is a lot of hard work and a small return? A. That is right.

8609

Q. And the other stuff, the coats, the pants, and the vests, that is the cream of the business?

A. That is right.

Q. The cream of the business you no longer had after the stoppage? A. No.

Mr. Barshay: I object to it. Rosen has already been declared out of this business, your Honor, so it is no longer material here.

Mr. Turkus: I am going to show that the cream of the business went to Garfield Express, Louis Cooper, and the defendant.

8610

Mr. Barshay: What of it?

The Court: Overruled.

Mr. Barshay: Exception.

Q. The cream of the business and everything except the knee pants business and the New York accounts all went to the Garfield Express? A. Right.

Q. And the New York accounts you have already told us was just holding its own? A. Right.

Q. So you were left with the short end of the business, weren't you? A. Right.

Nat Sobler—For Defts.—Cross

8611

Q. And the cream of it went to the Garfield?

A. Right.

Q. And the Garfield still has it?

Mr. Barshay: I object to it.

A. I don't know about it.

Q. Didn't you say in the District Attorney's office and didn't you thereafter swear to it, "All the rest of the Jersey business that the New York and New Jersey Transportation Company had, went to the Garfield Express and they still have the business"? A. I said that.

8612

Mr. Barshay: I object to it. The evidence here is clear that Buchalter's disassociation from the Garfield took place some time in 1937 and we are not responsible for what happened thereafter.

The Court: Sustained.

Q. Did you and Bluestein handle the knee pants business in New Jersey and the New York accounts together as partners for some period of time?

8613

Mr. Barshay: When?

Q. After Rosen got out.

Mr. Barshay: I object to it. It is immaterial.

The Court: Overruled.

Mr. Barshay: Exception, sir.

A. Yes.

8614

Nat Sobler—For Defts.—Cross

Q. A short time after that did Bluestein tell you he wanted to split, that Bluestein wanted the New Jersey knee pants business?

Mr. Barshay: Judge, I object to anything that transpired between Bluestein and this man. It is not in the presence of the defendant and it does not bind him in any way.

8615

The Court: Conversation is incompetent.

Q. Well, did Bluestein leave the partnership with you?

Mr. Barshay: I object to it. It is not binding on this defendant.

The Court: Overruled.

Mr. Barshay: Exception, sir.

(Pending question read).

8616

Q. Did he leave the partnership that he had and go out of it? A. That took place about a year later or eight months later.

Q. But did he? A. Yes.

Q. Did you wind up with the New York City business? A. No.

Q. Who did? A. Bluestein did.

Q. And you retained the knee pants? A. The Jersey business.

Q. That is slavery business that you told us about? A. That is right.

Q. Did you take over the city business later? A. Yes.

Nat Sobler—For Defts.—Cross

8617

Q. When was that? A. About six or seven months, five months, later.

Q. And Bluestein took over the Jersey knee pants then? A. That is right.

Q. A short time thereafter didn't Bluestein go broke and the New Jersey knee pants business also go to the Garfield?

Mr. Barshay: I object to it, not binding on this defendant that any man went broke. It does not connect him in any way.

8618

Mr. Turkus: This is within the period that Lepke was a partner in the Garfield Express.

The Court: How would he know another one did go broke?

Mr. Turkus: I withdraw it in that form.

Q. Didn't the Garfield shortly thereafter get the New Jersey knee pants business that you and Bluestein once had?

8619

Mr. Barshay: I object to it. It is incompetent here. It is not binding on this defendant.

The Court: He can state whether or not he knows that.

Mr. Barshay: Yes or no.

By the Court:

Q. Do you know that? A. I can explain that, your Honor.

8620

Nat Sobler—For Defts.—Cross

Q. Do you know it one way or the other? A. Yes, the Garfield paid him money for the business.

By Mr. Turkus:

Q. How much, \$500? A. \$500.

Q. You have been in contact with Bluestein recently, haven't you? A. Yes.

8621 Q. How many times? A. Maybe once or twice a week, still friendly, I see him often.

Q. Talk about this case? A. No.

Q. Was not Morris Bluestein one of the men that went with you to 35th Street? A. Right.

Mr. Barshay: That is 1940.

Q. Yes, in June or July of 1940? A. I can't remember the date.

Q. The time that you signed the statement? A. That is right.

Q. When Philly had you come up, you remember that? A. Yes.

8622 Q. Bluestein was with you? A. That is right.

Q. And he was one of the men who brought you to this place where you signed the statement? A. That is right.

Q. In before the impartial chairman, Sobler, didn't Plotkin refuse to go on with the hearing while you were present at the hearing?

Mr. Barshay: Please, that is a collateral matter. He is bound by the answer. It certainly does not bind this defendant what happened in '41 between this man and the impartial chairman.

Nat Sobler—For Defts.—Cross

8623

Mr. Turkus: This is as to his credibility. It is cross-examination.

Mr. Barshay: It is collateral. He has already answered he was not there. He is bound by the answer.

Mr. Turkus: I have a right to refresh his recollection on cross-examination. As Judge Talley used to say, you can even be repetitious on cross-examination.

Mr. Barshay: I am glad you and the Judge agree.

8624

The Court: For once you agree with Judge Talley. Read the question slowly.

(Pending question read.)

Mr. Turkus: That is a preliminary question.

By the Court:

Q. Do you know one way or the other? A. I don't know what happened there. I was not there.

By Mr. Turkus:

8625

Q. Didn't your wife then take the stand and swear in your presence that the business was in her name but that you were the boss?

Mr. Barshay: I object to it, sir. The man said he was not there.

The Court: He was asked whether or not he was present and heard his wife swear—

Mr. Turkus: Yes.

8626

Nat Sobler—For Defts.—Cross

The Court: That he, after all, was the boss?

Mr. Turkus: Yes.

The Court: He can answer that.

Mr. Turkus: That is all I want him to answer.

The Court: Because if he was not the boss, he could have jumped up and protested.

The Witness: What is that?

8627

(Pending question read.)

A. Don't you know nothing about it.

By the Court:

Q. Did you hear her so testify? A. I don't know nothing about it. I was never for the impartial chairman or had anything to do with it.

By Mr. Turkus:

Q. This affidavit that you signed each sheet and swore to, you read that in your own house, didn't you? A. I did.

8628

Q. Assistant District Attorney Joseph was one of the men that went on the automobile ride to your home, wasn't he? A. That is right.

Q. And you sat down in the leisure and privacy of your own home and read this affidavit with your glasses, didn't you? A. That is right.

Q. And in your presence one word that was misspelled was corrected, wasn't it? A. I suppose so.

Q. And you initialed it in the margin? A. That is right.

Q. And there was some relative or some friend

of yours at home when you read this leisurely, wasn't there? A. That is right.

Q. Who was that relative? A. A brother-in-law of mine.

Q. What is his name? A. Sam Richter.

Q. And Sam Richter, with his own handwriting, made the correction on page 3 of the affidavit, didn't he? A. That is right.

Q. And you initialed the correction and so did your brother-in-law, Sam Richter? A. That is right.

Q. So it was read over, not only by you but your brother-in-law, Sam Richter; is that right? A. That is right.

Q. And that is the Sam Richter that you have been testifying about heretofore, isn't it? A. That is right.

Q. How long after, in the privacy of your own home, that you read this affidavit and swore to it, was it that you appeared in one of the offices of counsel for Lepke? A. I don't know, maybe about six weeks or eight weeks. Before that. I really can't recollect. Perhaps maybe before that. I think I said before that.

Q. Which offices did you go to? A. 60 Wall Street.

Mr. Turkus: That is all.

Mr. Barshay: Let us see the date of that affidavit, Mr. Turkus.

Mr. Turkus: July 29, 1941.

Mr. Barshay: May I call your Honor's attention that the District Attorney has failed to offer this affidavit in evidence.

Mr. Turkus: It is offered in evidence.

8632

Nat Sobler—For Defts.—Cross

Mr. Barshay: Just a second. Let me finish my statement.

Mr. Turkus: The affidavit is offered in evidence.

Mr. Barshay: I will accept it. Let me see it. There is nothing inconsistent in that affidavit with this man's testimony.

Mr. Turkus: I made an offer. You said you accepted it.

8632

Mr. Barshay: Let me look at it. You do not want me to do it blindly, do you?

We have no objection to that part of the statement offered by Mr. Turkus except that which would be incompetent because of hearsay statements and not in the personal knowledge of this man.

The Court: That is what I figured, that when you got reading the full affidavit you would find more or less incompetent matter.

Mr. Barshay: That is right, sir. To the competent part we have no objection.

8634

Mr. Turkus: I deem the entire affidavit competent. Will the Court read it?

The Court: Do not pass this responsibility to the Judge. There was an offer and acceptance.

Mr. Turkus: There was an offer and acceptance.

The Court: Now if the Judge rules this way or that way, contrary to the way counsel views it, there will be an exception, maybe a motion for a mistrial. Either let it go in or withdraw your acceptance.

Mr. Barshay: I did not accept it un-

Nat Sobler—For Defts.—Cross

8635

conditionally. I said I accept his offer but I have a right to view every instrument offered in evidence.

The Court: You would be foolish not to.

Mr. Barshay: I would be foolish not to. I would not be a lawyer if I did not.

The Court: The affidavit is excluded.

Mr. Turkus: May I reopen the cross for one or two questions?

The Court: Yes.

8636

By Mr. Turkus:

Q. Weren't you threatened to get out of your business?

Mr. Barshay: I object to it unless it is connected with this defendant.

The Court: I don't know what it is. Overruled.

Mr. Barshay: Exception.

The Court: Yes or no.

8637

A. No.

Q. Didn't you state in the District Attorney's office that you were told that was what you were going to get and you would have to take it, referring to the knee pants business?

Mr. Barshay: I object to it as not binding on this defendant, and as far as this defendant is concerned it is absolutely hearsay.

8638

Nat Sobler—For Defts.—Cross

The Court: Does this apply to his direct examination?

Mr. Turkus: It applies to his direct examination.

The Court: How? He said nothing about that or anything connected with it.

Mr. Turkus: He did. He explained the chronology or events of his connection with with clothing business before and after Rosen and I am taking this because there is one other sentence that I want to read to him.

Mr. Barshay: Just a second, your Honor. How can any threat made by any other person except the defendant or his direct agent bind this defendant?

Mr. Turkus: That is what it was, the directed agent.

Mr. Barshay: I object—

Mr. Turkus: If your Honor will refer to the testimony of Rubin— I have a right even to make a defense witness mine for a point.

8640

The Court: What part of the testimony?

Mr. Turkus: Where there was the talk between Rubin and the defendant Lepke about the general stoppage and what had to be done to engineer it. Lepke sent him out to see all the truckers, all with the exception of Cooper, whom he himself, Lepke, would take care of, and with the exception of the Branch, which he said could not be stopped, and specifically sent him to the New York & New Jersey—

Nat Sobler—For Defts.—Cross

8641

Mr. Barshay: Your Honor, the proof—

Mr. Turkus: —to stop them. That is what I want.

Mr. Barshay: Are you finished? May I address the Court?

The Court: What is the question?

(Pending question read.)

Mr. Barshay: Before he answers, may I direct your Honor's attention that this man was never spoken to either by Rosen. When I asked him on direct examination your Honor sustained the objection, nor is there proof—

8642

The Court: I don't want to interrupt, but I intend to sustain the objection upon the ground it is not definite as to who made the alleged threat.

Mr. Turkus: All right. I will go into that.

By Mr. Turkus:

Q. Weren't you told during the course of the stoppage or before it—

8643

The Court: By whom?

Q. —by Max Rubin that you were going to get the knee pants business and that is all, and you would have to take it whether you liked it or not?

Mr. Barshay: I object to it. Max Rubin himself said he never spoke to Blue-

8644

Nat Sobler—For Defts.—Cross

stein or Sobler and that he directed his remarks only to Rosen.

Mr. Turkus: There is no such testimony.

The Court: Are you sure?

Mr. Turkus: I am sure. Mr. Klein remembers the record.

Mr. Klein: Spoke to all three partners.

The Court: You say you have, according to the record, an apparent delegation of authority by Buchalter?

8645

Mr. Turkus: Yes.

The Court: Apparently constituting agency?

Mr. Turkus: That is right.

The Court: What you are asking for is the representation making Rubin an agent. Then you have the question as to what the agent said. The question is whether or not in a criminal case a statement of the agent of that kind is admissible and binding upon a defendant. Inasmuch as the terms did not expressly authorize such a threat to be made, I don't see how you can get it in as competent.

8646

Mr. Turkus: I am not going to put it as a threat. Rubin was authorized,—more than authorized, he was directed specifically,—to stop the New York & New Jersey, and he was specifically directed how to treat with them after he had reported back to Lepke.

The Court: Nothing that he would say in excess of the authority expressly thereby given.

Nat Sobler—For Defts.—Cross

8647

Mr. Turkus: This is not in excess. He told this man that he would have to take that knee pants business, which this witness has testified to is the slavery end of the business; that is what he was going to get, and that is what he would have to take.

The Court: I am trying to think of what Rubin testified Buchalter told him. Just what was the language, according to the record?

8648

Mr. Barshay: Your Honor, the only thing Rubin said on the point was that the Svirsky account would be turned over to the New York & New Jersey.

The Court: What account?

Mr. Barshay: The Svirsky account would be turned over to the New York and New Jersey. When Rosen said or is alleged to have said that, all he had of this was the little Pennsylvania business. It was neither a threat nor an intimidation.

Mr. Turkus: Will your Honor refer to page 1147 et seq. of the record? I think it comes in at that point, 1149—1147, 1148, and 1149.

8649

The Court: I will find it in my notes in a minute. According to my notes Buchalter told Rubin that Katz wanted a stoppage of all trucks, as the New York business was going to Pennsylvania, whereupon Rubin told Buchalter that he had doubts about stopping Cooper of the Garfield and also the New York and New Jersey and also the Branch Storage.

8650

Nat Sobler—For Defts.—Cross

Mr. Turkus: Yes, there is more than that, too.

The Court: What page?

Mr. Turkus: 1147, '48, and '49. That is at one point. I think there will be more on cross if we have a chance to search for it.

Mr. Barsbay: I have it right here.

The Court: Will you wait a minute. At 1150 there is quite an answer.

8651

Mr. Turkus: It continues along. I just gave your Honor a starting point.

The Court: Yes, at 1150 particularly, because there he is reporting when he came back, and apparently what he told Lepke, because 1149-A says:

“Relate what you told us you said to Lepke. A. Regarding the New York & New Jersey?”

“Q. Yes.”

Then on the next page he tells. It appears therefore, by what I have just read, to mean that he told what was related on 1150 to Lepke.

8652

The objection is overruled.

Mr. Barsbay: Exception. I call your Honor's attention to the record directly that Lepke gave no other instructions to Rubin except to see them and report back, and he does not say anything about “Go out and threaten them,” and if Rubin acted beyond his authority, that is Rubin's business.

The Court: No, he said more than that. The answer was on page 1148: “He told

Nat Sobler—For Defts.—Cross

8653

me to go out and see what I could do.”
That, of course, is vague and general.

Mr. Barshay: That is right.

The Court: That alone would not admit of this answer which is now sought, but in view of the alleged report back and Buchalter accepting it, the answer may now be given.

Mr. Barshay: But, your Honor, he had never sent for this witness or the partner, Bluestein, thereafter. He said, according to the testimony here, “You tell Rosen I want to see him.”

8654

Mr. Turkus: He did not have to send for them any more. He only had Rosen to deal with.

Mr. Barshay: I am talking for the record.

The Court: I would not let this in if I did not think it was safe.

Mr. Barshay: I take an exception.

(Pending question read.)

8655

A. Not before; I was after the stoppage, about three or four days after the stoppage, when the thing was settled—

Q. We did not hear your answer. A. I was told—

Q. Yes. A. I was not told before or in the stoppage, but I was told after the stoppage, when they settled up, when they settled.

Mr. Barshay: Did you finish your answer?

Q. Did you finish? A. Yes.

8656

Nat Sobler—For Defts.—Cross

8657

Q. Didn't you say, on page 4 of the affidavit, which you read in the comfort of your own home, alongside of your brother-in-law, Sam Richter, the following: "On that Saturday Max Rubin told Bluestein and me that we are going to have the New Jersey knee pants business and the New York accounts which we had. The knee pants business was the slavery business. The rest of the New Jersey business was the gentleman's business, which consisted of coats, pants, and vests. I argued with Rubin and told him that he was leaving me the slavery business and that I could not make a living with it, but Rubin told me that is what I was going to get and I would have to take it. I remember on that occasion that I fainted."

Did you say that and swear to it?

Mr. Barshay: I object to that as not binding on the defendant Buchalter.

The Court: Overruled.

8658

Mr. Barshay: It is in excess of Mr. Rubin's authority. It is binding only on Rubin.

The Court: Overruled.

Mr. Barshay: Exception.

A. Can I answer now?

Q. Yes. A. Everything is right, but I don't know how you got that in on Saturday. Max Rubin told me about three or four or five days later.

Q. You mean during the stoppage it happened?

A. After the stoppage.

Q. Let me go along point by point: Did Max

Rubin tell Bluestein and you that you and Bluestein were going to have the New Jersey knee pants business and the New York accounts that you had? A. Right.

Mr. Barshay: I object to it. It is not binding on the defendants.

The Court: Overruled.

Q. You understood that when you said that? A. Right.

8660

Q. Did you say this: "The knee pants business was the slavery business. The rest of the New Jersey business was the gentleman's business"? A. That is right.

Q. "Which consisted of coats, pants, and vests." Did you say that?

Mr. Barshay: I object to that. It is not inconsistent with what he said on direct.

The Court: Overruled.

Mr. Barshay: It is merely repetitious, sir, and does not add weight to it.

8661

The Court: Overruled.

Q. Did you say that? A. Yes.

Q. Did you say in your affidavit: "I argued with Rubin and told him that he was leaving me the slavery business and that I cannot make a living with it"? A. Right.

Q. And could you understand that when you said it? A. Right.

Q. Did you also and did you understand this:

8662

Nat Sobler—For Defts.—Cross

“But Rubin told me that is what I was going to get and I would have to take it”?

Mr. Barshay: I object to it, sir. It is not binding on the defendant Buchalter and hearsay as to him.

The Court: Overruled.

A. Right.

8663

Q. Did you understand this when you said this under oath: “I remember on that occasion that I fainted”?

Mr. Barshay: I object to it. That is not binding on the defendants. There is no proof that as the result of that conversation he fainted. He almost did here. He is a sick man. It would have a bad impression to leave with the jury.

The Court: Overruled.

Mr. Turkus: Don't worry so much about him.

8664

Mr. Barshay: I am worried about my defendant, not to be prejudiced in anything. He fainted because somebody else told him.

Q. Do you remember saying that? A. What?

The Court: That you fainted.

Q. That you fainted on that occasion.

Mr. Barshay: I object to it.

A. Yes, I did.

Nat Sobler—For Defts.—Redirect

8665

Q. You fainted because you were winding up with the slavery business, isn't that right?

Mr. Barshay: I object to it.

The Court: Sustained.

Mr. Turkus: All right, let the jury figure it out.

Redirect examination by Mr. Barshay:

Q. As a matter of fact, Mr. Sobler, before you signed this affidavit at your home on the 29th of July, 1941, you already had been to the office of Wegman & Climenko on July 15, 1941? A. That is right.

8666

Q. And you told them a story there, did you not? A. Yes.

Q. And that was the same story, substantially, you told Mr. Turkus? A. That is right.

Q. And as you told here? A. That is right.

Q. And you were subpoenaed as a witness to tell your story? A. That is right.

Q. You did not dictate this affidavit to a stenographer, did you? A. No.

8667

Q. You were asked questions and made answers? A. Yes.

Q. Is that so? And as a result of the questions and answers, someone in the District Attorney's office dictated the substance of what you were asked and answered, isn't that so? A. That is about. Can I answer that in my own way?

Q. Go ahead, answer it in your own way. A. Everything is about right there but Mr. Max did not tell me during the strike or in the strike

8668

Nat Sobler—For Defts.—Redirect

that, that i am going to take, but he told me about three or four days when Joe Rosen was out of the picture altogether, "That you are going to get and no more."

Q. In other words, he told you after the strike? A. Yes.

Q. But he told it to you? A. Yes.

Q. Did Buchalter ever threaten you? A. No.

Q. How long do you know him? A. I know him from about, I think it was, 1927.

8669

Q. Did Buchalter ever put you out of business? A. No.

Q. The business of Rosen at Pennsylvania, was it a paying proposition or a losing proposition?

A. No, that dragged us all in the expense we had; we could not make it pay.

Q. In other words, what Rosen brought in bogged the concern down?

8670

Mr. Turkus: I object to that. We have had Mr. Barshay testify to everything on redirect so far, and it is not inconsistent with the cross-examination. It is improper.

Mr. Barshay: I do not understand you, Mr. Turkus.

Mr. Turkus: You have been testifying with leading questions.

Mr. Barshay: It is the only way you can prove redirect unless you forget about the rule. I am sorry.

The Court: Overruled.

Q. At any time while Rosen was connected

Nat Sobler—For Defts.—Redirect

8671

with your concern, Mr. Sobler, did you draw \$100 every week? A. No.

Q. Did Rosen ever draw \$100? A. No.

Mr. Turkus: I object to it. This is improper redirect. Nothing like that brought out on cross.

The Court: Overruled.

Q. Wasn't it a fact that when you finally gave up the Pennsylvania business, which is the only thing Rosen put in, that your concern began to make a living? A. Right.

8672

Q. And even that living, did that amount to \$100 a week? A. No.

Q. At any time did it amount to near \$100 a week? A. No, I don't think—

Q. When you gave up the concern— A. —that it—

Q. Do you recall ever getting \$100 a week? A. No.

Q. Or \$75 a week? A. Yes, we had weeks we draw \$75, after.

8673

Q. After when? A. After Rosen withdraw.

Q. In other words, then, there were only two partners? A. Two partners.

Q. But when Rosen was there— A. No.

Q. You did not draw that? A. We did not draw a cent.

Q. As a matter of fact, Mr. Sobler, when you wound up the New York & New Jersey, did you pay your telephone bill? A. No.

Q. Did you have money to pay it, the corporation, not you?

8674

Nat Sobler—For Defts.—Redirect

Mr. Turkus: Your Honor, this is a reconduct of the direct examination all over again. Nothing touched on cross.

Mr. Barshay: I am showing the insolvency of the concern before, during, and after Rosen left, that is all.

Mr. Turkus: This was all gone over on direct.

8675

The Court: After he left is of no consequence, but it does not contradict what has already been testified to, that the business went down hill following the conference off of Broadway, which was on or about the month of July. Sustained.

Q. From the time Rosen entered your concern with the Pennsylvania business, did your concern show a profit with respect to what Rosen brought in?

8676

Mr. Turkus: Objected to as already answered on direct examination. This is not an issue in the case.

Mr. Barshay: Just a second.

The Court: I sustain the objection, but not on that ground.

Mr. Barshay: Exception. Your Honor has suggested that the business went down after a certain alleged conference. I say the proof from this man has been entirely to the contrary.

The Court: If you will think a second about your question, you will see it is incompetent, because it said with respect to what Rosen brought in. Nobody knows

Nat Sobler—For Defts.—Redirect

8677

what that kind of a question means, and an accountant might have a hard job figuring it out.

Q. Mr. Sobler, up to the time Kelly left, was your concern earning a livelihood? A. No.

Q. From the time Kelly left up to the time Rosen left, was your concern earning a livelihood? A. No.

Mr. Turkus: I object to this, Judge. This is a repetition of redirect after a cross.

8678

The Court: It is now a repetition. That was the very purpose of the direct. Sustained.

Mr. Barshay: I only put it, sir, in answer to your Honor's suggestion that the business began to slide down after a certain alleged conference.

The Court: I did not make any suggestion, just gave a reason for a ruling.

Mr. Barshay: I beg your pardon. Maybe the word "suggestion" was a word ill advised. Whatever you may call it—

8679

The Court: Words of wisdom.

Mr. Barshay: Words of wisdom, and through this witness it has been proved that was not the fact at all. The business was bad during Kelly's presence there, after Kelly left; after Rosen left it began to show a livelihood.

The Court: The jury has to figure when the business was not paying anyone why

8680

Nat Sobler—For Defts.—Recross

people who had to eat all that time continued it for a year and a half.

Mr. Barshay: I am not even concerned with that angle of it.

Q. Did you at any time after Rosen left have any substantial balance in the bank?

Mr. Turkus: That is the same as direct.
The Court: Sustained.

8681

Q. Did you at any time have enough money there to even draw the agreed earnings under the contract?

Mr. Turkus: That is objectionable. It has been gone over on direct.

The Court: Sustained.

Mr. Barshay: Exception.

Mr. Turkus: I have one final question.

Mr. Barshay: Excuse me, Mr. Turkus.

8682

By Mr. Barshay:

Q. Had you ever been arrested in your life?

A. No.

Q. Had you ever been convicted of any crime?

A. No.

Recross-examination by Mr. Turkus:

Q. The Svirsky Clothing, that is an account of the R. S. & Z., isn't it? A. Right.

Q. Which you say is your wife's business?

A. That is right.

Nat Sobler—For Defts.—Recross

8683

Q. How long has Svirsky been on account either for you or your wife? A. Well—

Q. How long, that is all. A. Well, I could not say how long. At least you give me a chance to explain how long.

Q. No, just tell me the number of years. A. I can't answer.

Q. All right, then don't answer.

Mr. Barshay: That is all, Mr. Sobler.

Mr. Baker.

8684

Mark this for identification. That is Mr. Sobler's affidavit, signed in July, 1940.

Mr. Turkus: That is an improper statement on the record. When a paper is offered for identification, it should not be characterized in the presence of the jury.

Mr. Barshay: Judge, he brought it out; I did not bring it out.

Mr. Turkus: The witness is off the stand.

The Court: What did he call it?

Mr. Turkus: He called it an affidavit.

8685

Mr. Barshay: Signed on the date it is signed.

Mr. Turkus: There should not be any characterization of the instrument.

Mr. Barshay: What do you call it, Mr. Turkus?

Mr. Turkus: Please, Mr. Barshay, I have a right—

The Court: What did he call it now?

Mr. Turkus: Just say, "I offer this to be marked for identification." You don't

8686

Nat Sobler—For Defts.—Recross

characterize it or its contents for the benefit of jury consumption.

Mr. Barshay: Who ever said anything about the contents? I urge your Honor to look at this paper. I said, "I offer this for identification, sworn to." I called it an affidavit.

The Court: This is simply bickering.

Mr. Barshay: That is right.

8687

Mr. Turkus: It is not simply bickering at all. Your Honor will read what he said.

The Court: He called it an affidavit, didn't he?

Mr. Barshay: Yes.

The Court: No harm done. Mark it for identification.

(Paper marked Defendant's Exhibit Z-S for identification.)

The Court: Whose testimony does Mr. Baker's testimony refer to?

8688

Mr. Barshay: The testimony of Allie Tannenbaum.

Ellsworth Baker—For Defts.—Direct

8689

ELLSWORTH BAKER, residing at Monticello, New York, called as a witness on behalf of the defendant Buchalter, being first duly sworn, testified as follows:

Direct examination by Mr. Barshay:

Q. Mr. Baker, are you an attorney at law duly admitted to practice law in the State of New York? A. I am.

Q. Since when? A. 1905.

8690

Q. 1905? Where is your office? A. Monticello, New York.

Q. How long has it been there? A. Been there since '26. Prior to that time it was in Hurleyville, about six miles from Monticello.

Q. Are you admitted to practice in other courts in the United States? A. In the Southern District of New York.

Q. Was there a time when you were the duly elected District Attorney of Sullivan County? A. There was.

Q. When? A. I was elected about a year, one or two years, after I was admitted to the Bar.

8691

Q. How long did you serve? A. One term.

Q. Thereafter you continued in the practice of law? A. I did.

Q. You knew the Tannenbaum family? A. I knew Albert Tannenbaum's father and I probably knew his son, the witness here, although I doubt if I would recognize him until this matter came up in Sullivan County in 1940.

Q. Who retained you on behalf of Allie Tannenbaum in 1940? A. His father, Samuel Tannenbaum, first communicated with me.

8692

Ellsworth Baker—For Defts.—Direct

Q. And after you were retained by his father, did you consult with the defendant then, the witness here, Allie Tannenbaum? A. I consulted with him after talking with his father. I am not certain that his father retained me. He talked with me about it and then afterward I talked with Allie Tannenbaum and I think it was as the result of conversations with both that I agreed to represent him. Subsequently I was assigned by the Court to represent him.

8693

Q. So that no other person except his own father retained you to represent Tannenbaum? A. Except at that time himself and afterward designation by the Court.

Q. I mean no outside source? A. No.

Q. I want to get that straight. A. I did not understand your question.

Q. Now in the course of your preparation of Mr. Tannenbaum's defense in Sullivan County on the charge of murder, did you prepare an affidavit? A. I did.

8694

Q. What was the affidavit? A. An affidavit accompanying a notice of motion for an inspection of the minutes of the Grand Jury which had found the indictment.

Q. Did you draw that affidavit on behalf of Mr. Tannenbaum after consultation with him? A. Yes, sir.

Q. Did you submit it to him? A. I did.

Q. Did you do that personally? A. I did.

Q. Where? A. In the County Jail.

Q. And in your presence what did he do with the affidavit? A. Read the affidavit, signed it, swore to it.

Q. Did you also act as a notary? A. I did.

Q. You are a notary, too? A. I am.

Q. Was anyone else present? A. No one. No one, except this signing was in a small room which opens on a corridor and I think a jailer was out in the corridor. No one was in the room at the time.

Q. No other people? A. No.

Q. Did you tell Mr. Tannenbaum when you handed him the affidavit what it was for? A. I told him previous to that what the affidavit was to be prepared for.

Q. Tell us what did you tell him.

8696

Mr. Turkus: I object to this. There is nothing inconsistent here. I cannot understand the purpose of calling this witness.

Mr. Barshay: I will tell you briefly. Mr. Tannenbaum said under oath—he admitted it right here—that in New Jersey, in the trial of Workman, he said under oath then, charging this man Mr. Baker, a former District Attorney of that county, with handing him a paper and saying this was a bill of particulars.

8697

Mr. Turkus: Oh, that is utterly nonsensical. That never happened in this trial at all.

Mr. Barshay: I did not say in this trial; I said in the Workman trial. It was repeated here on cross-examination.

Mr. Turkus: He admitted he thought the paper in New Jersey was a motion for a bill of particulars. That is a motion for inspection of Grand Jury minutes. To a layman it may be synonymous.

Mr. Barshay: That explanation may be

8698

Ellsworth Baker—For Defts.—Direct

acceptable to you but not to a man who has practiced law that long.

Mr. Turkus: Don't switch the trial. We are trying Lepke. I object to this. We have a murder indictment here, not anybody's personal feelings.

The Court: What difference does it make?

Mr. Turkus: I cannot understand—

8699

By the Court:

Q. You told him the nature of the paper and he understood it and swore to it, didn't he? A. I told him the nature of the paper and I had every reason to believe he understood it.

Q. And he read, signed and swore to it? A. Yes.

Mr. Barshay: That is all I want.

By Mr. Barshay:

8700

Q. You never told him it was a bill of particulars? A. Oh, no.

Q. You never misled him, that is the point?

Mr. Turkus: I object to that. There is no contention he was misled.

Mr. Barshay: Then I am satisfied, Mr. Turkus. That is all.

Mr. Turkus: Thank you, Mr. Baker.

CARL SHAPIRO, residing at 3301 Springdale Avenue, Baltimore, Maryland, called as a witness on behalf of the defendant Buchalter, after being duly sworn, testified as follows:

Direct examination by Mr. Wegman:

Q. Mr. Shapiro, what is your business? A. Clothing business, men's clothing business.

Q. And are you connected with a corporation engaged in that business? A. Yes, sir.

8702

Q. What is the name of that corporation? A. Raleigh Manufacturers, Incorporated.

Q. What office do you hold? A. Treasurer.

Q. Are you in direct charge of the operations of that business? A. Yes, sir.

Q. And have you been in charge of those operations since the year 1936, including the year 1936? A. I have been in charge of that business since the inception, which was in 1935.

Q. Did that business occupy an office in the building at 200 Fifth Avenue? A. Yes, sir.

Q. And have you, at my request, produced the lease under which that office was occupied? A. Yes, sir.

8703

Q. Did that lease come out of the files and records of your corporation? A. Yes, sir.

Q. And to your knowledge that is the lease covering the premises? A. Yes, sir.

Mr. Wegman: I offer it in evidence.

Mr. Turkus: This is a lease for Room 1011, commencing on the 1st of February, 1936, and terminating on the 1st of May, 1937. It is objectionable. It has no com-

8704

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petency, materiality or relevancy to anything brought out on the People's case.

The Court: What is it?

Mr. Wegman: If your Honor pleases, it has a direct bearing on testimony in the People's case.

The Court: By whom?

Mr. Wegman: By means of this lease, that would be the office that was occupied in that building and demonstrate that it was on the floor different from the floor testified to by witnesses for the People who said they were there.

8705

Mr. Turkus: It says on the tenth story, Room 1011 on the tenth story. Will your Honor read this?

The Court: What was testified to?

Mr. Wegman: They testified the seventh floor.

Mr. Turkus: They did not. They said the tenth floor.

Mr. Wegman: What?

8706

Mr. Turkus: They said the tenth floor. Why, that is in corroboration of the People's witnesses. That lease corroborates the People's witnesses.

Mr. Wegman: I press it.

Mr. Turkus: Go ahead, press it. I withdraw the objection. Thanks for the exhibit. I could not get it.

Mr. Wegman: You could by asking for it at any time, and you know that. You know you have the power of subpoena and it is a New York corporation.

The Court: Take it.

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8707

Mr. Turkus: I get something from you?

The Court: I suggest that you check over your minutes and see what the stenographer took down.

Mr. Wegman: I will do that, but there is a further purpose for the offer.

(Lease received and marked Defendants' Exhibit 7, in evidence.)

8708

Mr. Turkus: The exhibit should be read to the jury as long as it is in evidence now.

The Court: What room is it?

Mr. Turkus: Room 1011, on the tenth floor.

The Court: You do not want to read all that lease. Can't you paraphrase it, tell the jury what it is?

Mr. Wegman: All right, Mr. Turkus, perhaps you and I can agree that this is a lease dated January 29, 1936, between the Fifth Avenue Building Company and Raleigh Manufacturers, Inc., covering premises known as Room 1011, as shown by the red ink lines on plan attached hereto, on the tenth story of the building known as the Fifth Avenue Building, to be used solely as a wholesale showroom for men's clothing and for no other purpose whatsoever, for the term of one year and three months, to commence on the 1st day of February, 1936, to end on the first day of May, 1937, at a rental of \$1560. There

8709

8710

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is not anything else in here that you want me to read, is there?

Mr. Turkus: No.

8711

Mr. Wegman: Perhaps, however, we might read this to the jury: "It is understood and agreed that upon the execution and delivery of this lease, the lease heretofore made to the tenant of Room number 911 in the Fifth Avenue Building, dated December 10, 1935, is hereby terminated, and the sub-lease made by the tenant of said room 911 from Murray Knitwear Company, Inc., is terminated as of February 1, 1936."

Mr. Turkus: That part is not necessary, but it has been read. It does not make any difference. It has no application.

8712

Q. Mr. Shapiro, using this court room for the purpose of estimation, will you describe to his Honor and the jury about how large that office was?

Mr. Turkus: Just a minute. I object to it. The exhibit is the best evidence and it speaks for itself. Defendants' Exhibit 6, in evidence, is the best evidence of the size of the office.

The Court: Does it state it?

Mr. Turkus: It is put on there in red ink on the diagram.

The Court: This does not seem to identify Room 1011.

Mr. Turkus: Well, if you read the text

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8713

of the lease, your Honor, you will see that it refers to that portion of it marked in red ink on the exhibit which you have just turned over. If you will look at the exhibit, then read the lease, you will see that from the language of the lease that exhibit is incorporated therein and made part thereof and identifies the portion of the premises leased to the Raleigh by the landlord.

The Court: I see one that has figures "11". It does not give dimensions.

8714

Mr. Wegman: It does not give dimensions and that is what I am trying to get from the witness, if your Honor pleases, approximately by comparison with this room so that the jury may have an idea of the size of that office.

The Court: There is a dimension stated here, showing from the outside wall to the courtyard wall, sixty-eight feet. That divides two lines of offices and has a central hallway.

8715

Mr. Wegman: It does not indicate, however, the size of the portion of that width occupied by the Raleigh Company.

By the Court:

Q. Do you know the dimensions? A. I would say approximately eighteen by twenty-five feet.

By Mr. Wegman:

Q. Mr. Shapiro, were there partitions in that office? A. Yes, sir.

8716

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8717

Q. And how did those partitions divide the room? A. Well, the door opening from the hallway where all offices opened out, there was outer office which I would say approximately eight feet, and the entire width of the office, that was our outer office where we had a desk, a book-keeper, and a receiving set-up there. Then there was a partition from that part on. The balance of the office was divided in two equal offices. There were partitions of sheet steel and glass, and to the best of my recollection, they were about eight feet or nine feet high.

Q. You were in that office regularly during the time that Raleigh occupied it?

Mr. Turkus: I object to counsel leading.

The Court: I do not know what "regularly" means. You mean at regular intervals?

8718

Mr. Wegman: No, I mean regularly in the sense of every week and during the entire time of occupancy, not necessarily every day, but substantially so. I will re-frame the question.

Q. Did you spend a great deal of your time in that office, Mr. Shapiro?

Mr. Turkus: I object to counsel leading.

The Court: Overruled.

A. In managing this business it necessitated my being some of my time in Baltimore and

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8719

some of my time in New York, and it was a matter of habit with me and a regular routine layout; I spent ordinarily from Wednesdays including Saturdays, Wednesdays, Thursdays, Fridays and Saturdays, in the New York office, so that I could spend the week end with my family, and Mondays and Tuesdays, and sometimes on a Wednesday, I spent in Baltimore.

Q. When you were in New York you spent your time at the office during the business hours of the day? A. Except when I had to go out and attend to other matters which required my attention.

8720

Q. During that time you heard many conversations in that office, did you not? A. Very often.

Q. Were conversations in any part of that office audible in every other part of the office?

Mr. Turkus: I object to this. He would have to be an expert on sound and sound engineering.

The Court: The jury has to figure out the question of fact and also the question of—

8721

Mr. Turkus: Acoustics and sound engineering.

The Court: Not only that, but the attention that is being given to another.

Mr. Turkus: And how loud the speaker talks.

The Court: Chiefly, whether or not you pay any attention.

Mr. Turkus: And whether the telephone bell is ringing, and other things.

The Court: If everybody in this world

8722

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was all the time listening to what other people were saying, there would be a riot.

Q. Did you hear conversations when you were in one part of that office which were held in another part of the office?

Mr. Turkus: I object to this. Objection.

8723

The Court: The jury can figure it out. Do you want to prove he heard a specific conversation? You may ask him.

Mr. Wegman: I did not hear your Honor.

The Court: Repeat.

(Remarks of the Court read.)

Mr. Wegman: On the direct— Your Honor I want to prove it was impossible to have a conversation in that small room without everybody in the room hearing it.

8724

The Court: That does not mean anything. The jury can figure it out. They have the size and they have the partitions. There cannot be a presumption that everybody in the room, in an office divided into three rooms, is pricking up ears at everything that goes on that does not concern them. That is nonsense.

Q. Was it a matter of frequent comment among you and other employes of the company that conversations could not be held in that office without being overheard by everybody in the place?

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8725

Mr. Turkus: Objection.

The Court: Sustained.

Mr. Wegman: Exception.

Q. Mr. Shapiro, have you examined the records of Raleigh Manufacturers, Inc., for the purpose of refreshing your recollection as to whether or not you were in the New York office at Room 1011, in 200 Fifth Avenue, New York City, on September 11, 1936? A. Yes, at your request.

Q. And having refreshed your recollection from those records, are you now able to state whether or not you were at that office on that date? A. I was. I was in that office on that date.

8726

Q. September 11th? A. September 11, 1936.

Q. And it was your custom to be at that office—

Mr. Turkus: May we have the witness testify? We are getting down to something now that the witness should speak.

The Court: What is the date?

8727

Mr. Turkus: September 11, 1936, the Friday before Rosen was murdered.

A. After checking my records I found that I was absolutely in the office for the reason—

Mr. Turkus: Wait a minute. I object to him talking about records that are not in evidence.

Mr. Wegman: You cannot state the reason, Mr. Shapiro.

8728

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Q. Do you know Allie Tannenbaum? A. Yes.

Q. Do you know Max Rubin? A. Yes.

Q. Did you see either Allie Tannenbaum or Max Rubin in the office of Raleigh Manufacturers at 200 Fifth Avenue at any time whatsoever during the entire period of time that that office was occupied by Raleigh Manufacturers? A. No, I did not.

Q. And are you certain that you did not see either of them there on Friday, September 11, 1936?

8729

Mr. Turkus: Just a minute. There is no claim in any part of the case that Tannenbaum was there September 11th.

Mr. Wegman: I beg your pardon. If you will state that—

Mr. Turkus: I am not stating anything. Oh, I had the wrong month. I am sorry. You are still referring to Friday, September 11th.

8730

The Court: The Friday before the alleged murder.

Mr. Turkus: Yes.

The Court: The specific incident the witness is alleged to have referred to, as testified to by Tannenbaum, briefly, that Rubin and Lepke were together.

Mr. Turkus: Yes.

The Court: Lepke was flushed and looked angry, and he said to Rubin he had given Rosen money to go away with but he always came back and there was one so-and-so who would never go down to Dewey and talk about him, and Rubin

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8731

tried to pacify him, and Lepke said, "You told me that before, and this is the end of it." I take it that that is the conversation referred to, and that this is an effort to show it did not occur by showing that this man did not notice it, if he was there.

Mr. Wegman: May I go further than that, if your Honor pleases? This man has testified— I have not asked him whether that conversation occurred because my other question was all embracing.

8732

The Court: Go ahead with your question.

Mr. Wegman: I shall come to that specific question.

Q. Did you hear any such conversation in that office on Friday, September 11th? A. No, sir.

Q. Did you ever hear it at any other time? A. No, sir.

Mr. Turkus: Put the year in.

8733

Q. 1936? A. No, sir.

Q. Did you ever see either Allie Tannenbaum or Max Rubin in that office either on Friday, September 11, 1936, or any other time? A. No, sir, never saw them up there.

Q. And when you were in New York, did you spend the greater part of the business day in that office? A. Yes, sir.

Mr. Turkus: I object to this. Why

8734

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don't we have the witness testify to what he did September 11, 1936?

The Court: Sustained.

Q. On Friday, September 11, 1936, what part of the day did you spend at that office? A. I usually come in the morning—

Mr. Turkus: Just a minute.

8735

The Court: Let us get his answer, then we will know what it means.

Mr. Turkus: I object to what his usual custom was.

The Court: Why don't you wait until you get the rest of it and see what he is basing his statement on?

Mr. Turkus: I am supposed to object at the proper time.

The Court: Finish your answer. You usually what?

8736

A. (Continued) I would come in in the morning, open my mail, and take care of my correspondence; take care of a customer if he came in, some of the women salesmen when they come in in the business course of the day and wait to be waited on and see their lines; prepare lines; work on advertising, sign checks, and so on, an ordinary business course of events.

By the Court:

Q. So your mind is pretty well occupied at all times by your own business? A. Yes, sir.

Q. Do you have time to listen to other peo-

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8737

ple's business? A. No, your Honor. If there is an argument there, I could absolutely hear that.

Q. Unless there was a disorder to take your mind off your own business, you would not hear what was going on? A. Yes, your Honor, or I could hear if a customer in one of the other rooms was objecting to a line.

Q. From time to time a voice is raised in that office in the course of the day? A. Yes.

Q. Nothing unusual about that? A. Nothing unusual about that.

8738

By Mr. Wegman:

Q. Was it usual or unusual for the defendant Buchalter to raise his voice? A. Mr. Buchalter as a rule rarely raised his voice, in fact, I don't believe I ever heard him raise his voice.

Q. Is it now your best recollection at this time that you never heard him raise his voice?

A. That is right. Mr. Buchalter had very little to say at all times.

8739

Q. Mr. Shapiro, who else was employed in that office at that time, referring now to September, 1936? A. Our office manager, Frank Cohen, our credit man who handled the credits and did other work, Irving N. Siegel, and a young lady who is a niece of mine who has since passed away.

Q. Her name was Naomi Shapiro? A. That is right.

Q. And she died in July, 1939? A. She died in 1939.

Q. Mr. Shapiro, on Friday, September 11,

8740

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1936, were those three employees at that office?

A. Yes, sir.

Q. Was there a rule in force in the regular course of business of Raleigh Manufacturers that there was never to be a time during any business day when either Frank Cohen or Irving Siegel was not in the office?

Mr. Turkus: I object to it. It is not the rule we are concerned with.

8741

The Court: Sustained.

Q. Did you as the executive head of this business instruct Frank Cohen and Irving Siegel that one or the other of them must be in the office at all times?

Mr. Turkus: Objection.

The Court: Sustained.

8742

Q. Do you recall, Mr. Shapiro, a single instance of any time during the month of September, 1936, when during the office hours of the day either Frank Cohen or Irving Siegel was not in that office?

Mr. Turkus: By his own testimony it would be an impossibility. Here is a man that is down to Baltimore; he is out with a lot of accounts and business in the city, not in the office all the time. How can he state what goes on the in office when he is not there?

The Court: Sustained.

Mr. Wegman: I respectfully except.

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8743

Q. Was that office to your knowledge ever left unattended by either Frank Cohen or Irving Siegel?

Mr. Turkus: Objected to. That is an impossibility for the man to tell what goes on when he is not there.

The Court: Sustained.

Q. Was there ever a time within your experience when you found or learned that that office was not attended by either Frank Cohen or Irving Siegel at any time during the business day?

8744

Mr. Turkus: Objected to; hearsay.

The Court: Sustained.

Q. Within your knowledge and recollection, Mr. Shapiro, do you know of any time or any occasion when either Frank Cohen or Irving Siegel was not in that office?

8745

Mr. Turkus: Same objection.

Q. During the business hours of the day?

Mr. Turkus: That is hearsay. They would have to tell him these things.

By the Court:

Q. Was it the usual thing for one of them to be there? A. The office had to be attended to at all times.

Q. We assume that. A. That is a fact.

8746

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Q. But mistakes will happen in the best regulated offices. A. Well, we never know when a customer would come in, your Honor.

Q. During business hours somebody was supposed to be there? A. Somebody was supposed to be there.

Q. And so far as you know that was followed? A. That is right.

8747 Q. You never came there and found the office vacant during business hours? A. That is right, and at no time did any customer ever tell me that he came in and there was nobody there.

Mr. Turkus: That is hearsay.

The Court: What difference does it make? It is business usage.

Mr. Turkus: That is the trouble with it. What good is it?

The Court: It is for the jury to figure out as to what the listening likelihood is.

8748 Mr. Wegman: If your Honor pleases, I go further than that. I say that you cannot hear a non-existent person, or someone who was not there. I am demonstrating now, I believe, that these people were never in that office, and so the conversation could not have been held to be overheard by anybody.

Mr. Turkus: Let the jury determine that demonstration.

The Court: The jury will figure that. I will take the evidence.

Mr. Wegman: That is what I am attempting to demonstrate now.

By Mr. Wegman:

Q. So far as you know, Mr. Shapiro, was there any time whatsoever on Friday, September 11, 1936, when either Frank Cohen or Irving Siegel was not in that office during business hours?

Mr. Turkus: I object to it. How could he tell that unless he was there during the whole business day?

Mr. Wegman: He said he was there, Mr. Turkus.

8750

Mr. Turkus: From start to finish?

By the Court:

Q. Do you remember anything about it, Mr. Witness? A. I cannot exactly say if I spent every minute of my time that day in that office, but I know that the office—

Q. Does your mind record so as to carry all these years whether or not either of those men were there that day? A. They were there, and so was Naomi Shapiro.

8751

Q. How about Tannenbaum? Do you remember if he was there or not? A. He was not there.

Q. You mean you do not remember, or what? A. He was not there.

By Mr. Wegman:

Q. Mr. Shapiro, will you please keep your voice up so that we can hear you? We did not hear any part of your answers to his Honor. A. Mr. Tannenbaum was not in that office at any time.

Q. That day or any other day? A. Or any other day.

8752

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Q. And how about Max Rubin? A. He was not there, or any other day, not that day or any other day.

Q. Do you know the defendant Weiss, Mendy Weiss? A. I have seen Mendy Weiss.

Q. He is the gentleman in the brown suit here, the second from the left.

8753

Mr. Turkus: Just a minute. The witness may not need counsel to point out Mendy Weiss to him. Let us find out from him what the extent of it is. He said he had seen him. I object to it in that form.

By the Court:

Q. Do you know Weiss? A. Yes, sir.

By Mr. Wegman:

Q. Did you ever see Mendy Weiss at that office at 200 Fifth Avenue? A. No, sir.

8754

Q. In the month of September, 1936, or any other time? A. No, sir.

Q. Positive of that? A. Positive.

Mr. Wegman: You may examine.

The Court: Do you want to examine now?

Mr. Turkus: Well, I cannot complete it.

Mr. Wegman: Pardon me.

By Mr. Wegman:

Q. Mr. Shapiro, did you see either Rubin or

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8755

Tannenbaum at any time on Friday, September 11, 1936, at any place, at any other place? A. No, I did not. I don't believe I did. I am pretty sure of it.

Mr. Wegman: You may examine.

The Court (To witness): You be here tomorrow morning at 10:00 o'clock.

Mr. Turkus: Will your Honor direct the witness to bring with him the records he used to refresh his recollection?

8756

Mr. Wegman: I have those and I shall be glad to mark them for identification at this time. If you want them in evidence, you can see them. That is the rule. I will be glad to offer them in evidence. I now offer them in evidence.

The Court: You be here tomorrow morning at 10:00 o'clock for cross-examination.

Mr. Wegman: May I be indulged by the Court to ask one single question more?

The Court: We are taking a recess now. What is it you wanted?

8757

Mr. Wegman: May I ask one single question now and then I am through?

The Court: Do it in the morning.

Gentlemen of the jury, please do not discuss the case, let nobody talk to you about it. Keep your minds open. Follow all other admonitions heretofore given which are continuous through the trial of the case. The jury may go out the main door. The witness will go out this way.

(Ten checks were marked Defendants' Exhibit Z-9, for identification.)

8758

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Mr. Wegman: Now, if your Honor pleases, may I ask your Honor to direct the District Attorney to have Rubin and Tannenbaum available tomorrow morning for the purpose of identification?

Mr. Turkus: Yes.

The Court: Do you want the witness to return?

Mr. Turkus: They were here today.

Mr. Wegman: We could not get to it.

8759

Mr. Turkus: I thought you were going to have him identify them.

Mr. Wegman: I do not want anybody to identify them. I just want them to be seen by certain witnesses who will take the stand, and we could not get to those witnesses today.

The Court: Do you want the same announcement made today as yesterday in regard to witnesses?

Mr. Wegman: If your Honor will please do so.

8760

The Court (To Clerk): Make the announcement.

Court Clerk: All witnesses under subpoena by defendant Buchalter will return here tomorrow morning at 10:00 o'clock without further notice.

The Court: Have that shouted in the corridor by the attendants.

(Defendants remanded.)

(Thereupon an adjournment was taken to November 19, 1941, at 10 a.m.)

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8761

Brooklyn, N. Y., November 19, 1941.

TRIAL RESUMED

CARL SHAPIRO, a witness in behalf of the defense, resumed the stand and testified further as follows:

Direct examination by Mr. Wegman (continued):

Q. During the year 1936 and particularly in the summer and fall of that year, having particular reference in mind the occasion and month of December, 1936, did you see police officers in the office of the Raleigh Manufacturing Company at 200 Fifth Avenue? A. Yes.

8762

Q. Will you tell his Honor and this jury how often they were there? A. Sometimes they came as often as once a day.

Q. Were police officers regularly in the hall outside of that office, in the hallway of the building outside the office? A. Yes, sir.

Q. You are a brother of Jacob Shapiro? A. Yes, sir.

8763

Q. Sometimes known as Charlie Gurrah? A. That is right.

Cross examination by Mr. Turkus:

Q. You are not only a brother of Gurrah, but you are the front for Lepke and Gurrah in the Raleigh, aren't you?

Mr. Wegman: I object to the question and I ask your Honor to instruct Mr.

8764

Carl Shapiro—For Defts.—Cross

Turkus not to repeat any such question. I ask your Honor to instruct the jury to disregard it. It is an unwarranted insult, for which there was no justification or basis whatsoever.

The Court: Objection overruled.

Mr. Wegman: I ask for the withdrawal of a juror and the declaration of a mistrial on the basis of your Honor's ruling.

The Court: Motion denied.

8765

Mr. Wegman: Exception.

A. I happen to be a brother of Jacob Shapiro—I happen to be.

Q. Are you the front in the Raleigh for Gurrah and Lepke? A. I am not the front.

Mr. Wegman: I object to the end of the question. I again ask your Honor to instruct Mr. Turkus to desist from that sort of questioning, and to instruct the jury to disregard the question.

8766

The Court: That is an unwarranted interruption. The Court has previously ruled on that. The sole purpose of this is to give the witness a chance to think.

Mr. Wegman: I respectfully except to your Honor's statement, and I renew my motion for the withdrawal of a juror and the declaration of a mistrial.

The Court: Motion denied. You are directed to take your seat.

Mr. Wegman: I take an exception to that.

Q. (Question repeated by the stenographer.)

A. No, sir.

Q. What office do you hold in the Raleigh? A. Treasurer of the corporation.

Q. Who are the other officers? A. Nathan Borish, president, and I am also the secretary.

Q. The Raleigh employs hundreds of people, doesn't it? A. Seven hundred, approximately.

Q. Who are the stockholders of the Raleigh? A. Nathan Borish, Carl Shapiro, Samuel Smith.

Q. Samuel Smith? A. Yes, sir.

8768

Q. You were a member of Greenberg & Shapiro, weren't you? A. Yes, sir.

Q. When did you terminate your connection with Greenberg & Shapiro? A. Greenberg & Shapiro were liquidated in 1935.

Q. Where did Greenberg & Shapiro maintain its office? A. 935 Broadway.

Q. Was there a Fifth Avenue number? A. 200 Fifth Avenue.

Q. You were in the embroidery business, weren't you, previous to the clothing business? A. Yes, sir.

8769

Q. I am talking about when you were with Greenberg & Shapiro, you were in the embroidery business? A. No, sir.

Q. What was the business of Greenberg & Shapiro? A. Men's clothing business.

Q. For how long? A. A little more than two years.

Q. What was the portion of men's clothing? A. All men's clothing.

Q. That was two years' experience you had with Greenberg & Shapiro? A. Yes, sir.

8770

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Q. Before that what was your business? A. Pleating and stitching.

Q. And that was your business exclusively? A. Yes, sir.

Q. Now, when you maintained offices at 200 Fifth Avenue with Greenberg & Shapiro— A. That is not so.

8771

Mr. Wegman: I object to the question, stating facts not in the record and contrary to the evidence.

The Court: Objection overruled.

Mr. Wegman: Exception.

Q. What was the Fifth Avenue address of Greenberg & Shapiro? A. That was 935 Broadway.

Q. Did it have a Fifth Avenue entrance? A. Yes, sir.

Q. What was the Fifth Avenue entrance, the number? A. The building had a Broadway and a Fifth Avenue entrance.

8772

Q. That was an office in which Lepke and Gurrah hung out? A. They were there, yes, sir, but not hanging out.

Q. Not only were they there, but that was their hangout. A. No, sir.

Mr. Wegman: I ask the witness be permitted to answer the question. Mr. Turkus broke in with a following question before the answer was complete. I ask the witness be given an opportunity to complete his answer for the record and for the hearing of the jury.

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8773

The Court: The interruption clearly indicates a desire to give an opportunity for the witness to think over his answer.

Mr. Wegman: I except to your Honor's statement. I consider it a personal insult. I desire to note my exception on the record. There was no such intention, and I resent the attack on my integrity.

The Court: Just please sit down. Objection overruled.

Mr. Wegman: Exception.

8774

Q. In the two years that you were associated with Greenberg in this firm of Greenberg & Shapiro, on an average of how many times a week did Lepke and Gurrah come in those offices?

A. Lepke was up there very seldom. My brother, Jacob Shapiro, was there on an average of—

Q. (interrupting) That place was a hangout for Lepke and Gurrah also? A. No, sir.

Q. How many times did you see Charlie Workman, alias Charlie the Bug, up at the office of Greenberg & Shapiro? A. Hardly ever.

8775

Q. How many times would you say that is, hardly ever? A. He was there once or twice.

Q. You know Charlie Workman? A. Yes, sir.

Q. You know he is known as Charlie the Bug? A. That is right.

Q. You know he pleaded guilty to the murder of Dutch Schultz?

Mr. Wegman: I object to the question, if your Honor please, and ask that the jury be instructed to disregard it utterly. It is immaterial and has nothing to do with

8776

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the credibility of this witness or any of the issues in this case. I ask your Honor to instruct the jury to disregard the question in its entirety, and I again request that Mr. Turkus be instructed to desist from that sort of questioning.

The Court: Objection overruled. Motion denied.

Mr. Wegman: I renew my motion for the withdrawal of a juror and the declaration of a mistrial because of the prejudice necessarily carried with that statement.

8777

The Court: Finish everything you want to say and then the Court will give one ruling, which will cover it all.

Mr. Wegman: That is all I have to say.

The Court: Objection overruled; motion denied.

Mr. Wegman: May I rise to take exception to your Honor's remarks?

8778

Q. (Pending question read by the reporter.)

A. I don't know that.

Q. You never heard that? A. No, sir.

Q. You read the newspapers? A. Yes, sir.

Q. Who was Charlie the Bug up to see in the office of Greenberg and Shapiro on the occasions you remember? A. He might have come up to see my brother; and then again I might not be so positive he was there at all.

Q. Now you are not sure he was up there? A. He might have been there and he might not.

Q. From where did you know Charlie the Bug if it was not from Greenberg & Shapiro's? A.

I have been brought up in New York practically the greater part of my life.

Q. You did not associate with Charlie the Bug? A. No, sir.

Q. You did not belong to any lodges or clubs with him? A. No, sir.

Q. You did not visit his home, socially? A. No, sir.

Q. He was not a caller at your home? A. No, sir.

Q. You had no social contacts with him? A. 8780
No, sir.

Q. You certainly had no business with Charlie the Bug? A. No, sir.

Q. Well, then, wasn't it at Greenberg & Shapiro's that you met him? A. I don't say that.

Q. You are not sure of that? A. No, sir, I said I did not say that.

Q. You 'don't frequent pool rooms, do you? A. When I was a kid, yes, sir.

Q. Did you know Charlie the Bug when he was a kid? A. I might have known him when I was about 12 or 13. 8781

Q. It is not what you might have done. Don't you remember where you met Charlie the Bug? A. No, sir, I do not.

Q. Let's see: Philip Cohen, alias Little Farvel, how many times was he up to Greenberg & Shapiro's? A. I don't believe he was ever.

Q. You know Little Farvel? A. I may have when I was 10 or 11 or 13 years old while living on the East Side and some of these boys lived there and that is how I knew a good many of them.

8782

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Q. You did not go to school with Little Farvel? A. No, sir.

Q. You did not play on the streets of the East Side with Farvel? A. No.

Q. You did not go out socially with him? A. No, sir.

Q. You did not have him to your home for dinner, did you? A. No, sir.

Q. You did not belong to any club or clubs? A. No, sir.

8783

Q. You certainly had no business with Farvel Cohen? A. No association.

Q. Refreshing your recollection, aren't you sure now that you met him at Greenberg & Shapiro's? A. I don't think I did.

Q. Well, let us get along to Allie Tannenbaum. How many times was Allie Tannenbaum up to Greenberg & Shapiro's? A. Quite a few times.

Q. Quite a few times in the two years is your estimate as to that? A. Well, I would not know the number, but he was there from time to time.

Q. Often? A. No, sir, not often.

8784

Q. Allie Tannenbaum did not come to see you socially? A. No, sir.

Q. And you did not visit Allie's home? A. No, sir.

Q. You did not invite him to your home? A. No, sir.

Q. You had no business with Mr. Tannenbaum? A. No, sir.

Q. Who did Tannenbaum come up to see at Greenberg & Shapiro's? A. My brother.

Q. He did not come up to see Lepke? A. He was not there often.

Q. But on the few occasions when Lepke was there, Tannenbaum did not see Lepke, did he?

A. I could not answer that, I would not know.

Q. You cannot remember a single occasion when Tannenbaum was in conversation with Lepke together? A. To be honest, I don't think I ever saw them together.

Q. You don't think you saw Tannenbaum there? A. Together with Lepke, was your question.

Q. You are sure you saw him with your brother? A. Yes, sir.

8786

Q. Of course, your brother does not appear in this case as a defendant, does he?

Mr. Wegman: I object.

The Court: Objection overruled.

Mr. Wegman: Exception.

Q. (The Court) You know he is not a defendant? A. I know he is not a defendant.

Q. How many times was Louis Kravitz up at Greenberg & Shapiro's? A. He was there a few times.

8787

Q. And during the two years can you estimate the number of times he was there? A. That would be a guess—I could not answer that.

Q. Of course, Louis Kravitz did not come to see you socially; he was not one of your social intimates—he did not visit your home or you his; you did not belong to lodges together? A. No, sir.

Q. You did not go to school together? A. No, sir.

Q. Did Louis Kravitz come up to visit Lepke

8788

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at Greenberg & Shapiro's? A. Lepke was there very seldom.

Q. Do you remember Louis Kravitz being together with Lepke at Greenberg & Shapiro's?

A. Considering he was there so seldom, I could not say.

Q. Who did he see up at Greenberg & Shapiro's? A. He came up to see my brother.

Q. By your brother, you mean Gurrah? A. Yes, sir.

8789

Q. You saw Emanuel (Mendy) Weiss up at Greenberg & Shapiro's a number of times? A. No, sir, I did not.

Q. Never? A. I don't believe I ever remember seeing him in Greenberg & Shapiro's place at 935 Broadway.

Q. In the two years the office was maintained there you don't recall a single instance when you saw Emanuel (Mendy) Weiss in Greenberg & Shapiro's? A. That is right.

Q. You knew Emanuel (Mendy) Weiss when you took the stand—how long did you know him? A. Back to the time I was a kid.

8790

Q. You and Mendy Weiss did not go to school together? A. No, sir.

Q. You did not play marbles together on the East Side? A. No, sir.

Q. You did not fly kites together? A. I did not have much time to play in those days those games.

Q. You have not been to Mendy Weiss's home? A. No, sir.

Q. And he does not visit your home? A. No, sir.

Q. You do not belong to clubs together? A. No, sir.

Q. You do not go out socially together? A. No, sir.

Q. Through whom did you meet Mendy Weiss? A. As I brought out before, through the neighborhood we were brought up in, and I saw him around the streets.

Q. But you never once saw Mendy Weiss in either of Greenberg & Shapiro's offices or the Raleigh office at 200 Fifth Avenue? A. I don't believe I did.

Q. Does your memory need any refreshing? Would it help you any? A. If you can help me, all right.

8792

Q. At the times you saw Charlie the Bug and Farvel Cohen and Louis Kravitz, didn't you perchance see Mendy Weiss with them? A. No, sir.

Q. How many times did you see Sam Feinstein up in the office? A. That name does not sound familiar.

Q. Toots Feinstein? A. I don't recall that name.

Q. Don't you remember the fellow who disappeared from his home—do you remember him—Sam (Toots) Feinstein?

8793

Mr. Wegman: I object to the question as improper. The witness said he does not remember the name, does not recognize the name, and the implication in the statement that Mr. Turkus has made is an improper implication.

The Court: Objection overruled.

Mr. Wegman: Exception.

Mr. Climenko: I move for the with-

8794

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drawal of a juror and the declaration of a mistrial, on the grounds of prejudice.

The Court: Motion denied.

Mr. Climenko: Exception.

(Pending question read to the witness.)

A. That does not bring any recognition to me.

8795

Q. Well, how many times did you see Izzy Bartfield up there? A. I have a remote remembrance of Izzy Bartfield, but I cannot place him. Whether or not you are referring to—this goes some time back.

Q. I am going back to Greenberg & Shapiro's. That is not so far back; that is two years before you went to the Raleigh. A. That would be nine or eight and a half years ago. I remember the name but I cannot place the individual.

Q. You did not go to school with Bartfield? A. I could not answer that.

Q. You did not play marbles with him? A. I could not answer that; I do not remember the individual.

8796

Q. You remember merely the name of Bartfield? A. The name is familiar.

Q. How about Sidney Salles, how many times was he to the office? A. I cannot place that individual.

Q. Possibly you can remember him by the name of Shimmy. A. That has a familiar sound, but I cannot place the individual.

Q. Didn't you answer that Shimmy was a visitor at the office of Greenberg & Shapiro? A. I could hardly answer that.

Q. Take it in conjunction with Charlie (the Bug) Workman and Farvel Cohen and Louis

Kravitz. Do you have any recollection of seeing Sidney Salles in their company at Greenberg & Shapiro's? A. The name does not sound familiar at all.

Q. Take a look at this picture and see if it refreshes your recollection about it, about Shimmy. A. I cannot say I do, from that picture.

Q. You do not deny, do you, that Mr. Salles was a visitor at Greenberg & Shapiro's? A. Not knowing the party, I could not deny anything.

8798

Q. Now, Danny Fields, how many times was Danny Fields up to Greenberg & Shapiro's? A. Very often.

Q. Of course, Danny Fields did not come to see you socially? A. Well, Danny Fields represented the union, I believe.

Q. He did not come up to see you socially? A. No, sir.

Q. Danny Fields and you did not go to school together on the East Side? A. No, sir.

Q. No social, home contacts? A. No, sir.

8799

Q. No club affiliations? A. No, sir.

Q. Who did Danny Fields come to see at Greenberg & Shapiro's? A. He came up to see me sometimes with regard to cutters.

Q. To visit you? A. My brother.

Q. And Lepke? A. No, sir, Lepke was seldom there.

Q. Did you see Danny Fields at the same time that the Bug was up there, and Cohen and Kravitz? A. That I could not say.

Q. Well, think. A. He was up there. Whether

8800

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they were there at one given time, I could hardly answer that, to be truthful.

Q. Yeggy Feinberg, how many times was Yeggy up there? A. I don't believe he was ever up there, if we are referring to the same party.

Q. Yeggy Feinberg. A. That goes back a good many years. In fact, prior to nine years ago, before we were in the clothing business.

8801

Q. You know Yeggy Feinberg? A. I knew him.

Q. Did you see him? A. I could not say; I don't believe he was up there.

Q. The name is familiar to you? A. That name is familiar, yes, sir.

Q. Of course, Paul Berger frequently came up to Greenberg & Shapiro's? A. No, sir, he did not.

Q. He never came there at all? A. No, sir.

Q. You never saw Paul Berger in Greenberg & Shapiro's? A. I would meet him in the street.

8802

Q. But never in Greenberg & Shapiro's? A. I don't recall ever seeing him up there.

Q. On direct testimony in this case you were asked whether or not you saw Paul Berger at 200 Fifth Avenue on September 11, 1936, weren't you?

Mr. Wegman: I object to that as improper in form, prejudicial in its casting, and asked for an improper purpose.

The Court: Objection overruled.

Mr. Wegman: Exception.

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8803

Q. (Pending question read to the witness.)

A. I cannot recall that being asked.

Q. Yesterday, when counsel for Lepke questioned you, you were not asked whether you saw Paul Berger on Friday, September 11, 1936, were you? A. I don't recall that question.

Mr. Wegman: If your Honor please, the witness answered before I had a chance to put any objection on the record. I did object to the same question previously.

8804

The Court: Objection sustained.

Mr. Wegman: I move to strike out the answer.

The Court: He had answered it previously, that he does not recall whether he was asked that question.

Q. Did you attend the Bar Mitzvah of Lepke's son? A. Yes.

Q. How long ago was that? A. Well, it is a matter of years. I do not recall the exact years.

8805

Q. About seven years ago? A. If it was seven years—maybe it is seven years ago.

Q. That is a ceremony when a Hebrew reaches the age of thirteen? A. That is right.

Q. At the Bar Mitzvah you saw various of the persons whose names we have discussed, didn't you?

Mr. Wegman: I object to the question.

The Court: Objection overruled.

A. I met many people there.

8806

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Q. See if I can recall whom you met at the Bar Mitzvah. Where was it held? A. I cannot recall that.

Q. Was the Bug at the Bar Mitzvah? A. I could not say.

Q. Was Mendy Weiss at the Bar Mitzvah? A. I don't know.

8807

Mr. Wegman: Before Mr. Turkus asks the next question, because I do not want your Honor to make any further accusation of my method, or any attack on my integrity, may my objection stand to this entire line, beginning with the original question about the Bar Mitzvah as having nothing to do with this case and as being improper and having no bearing whatever on the credibility of this witness? May my objection stand to the entire line, so I do not have to interrupt each question? The Court: I so understand it.

8808

Q. Do you remember seeing Louis Kravitz there? A. I don't believe I spent very much time there. I was in there a short period and may have been at the Bar Mitzvah.

Q. Do you remember seeing Toots Feinstein, Izzy Bartfield, Shimmy, Sidney Salles, Irving Friedman, alias Danny Fields, Yeggo Feinberg, Paul Berger, Willie Alberts, Allie Tannenbaum, —any of those individuals? A. I could not really answer that question. I met a lot of people there.

Q. Was Gurrah there? A. Yes, sir.

Q. Let us go back to the place of Greenberg

& Shapiro. Do you remember seeing Max Rubin there? A. Maybe once or twice.

Q. Who did Max Rubin come to see? A. He came up to see my brother.

Q. Never Lepke? A. Lepke was seldom there.

Q. When Max Rubin was there did you ever see any of the other individuals whose names we discussed? A. I could not answer that.

Q. Did Greenberg & Shapiro have a union or N.R.A. label when you were operating? A. Yes, sir.

8810

Q. Wasn't Max Rubin up there with great frequency? A. No, sir.

Q. Didn't he have business with you? Didn't you sell him suits? A. No, sir.

Q. Didn't you sell him suits with an N.R.A. label in them? A. He was never in the retail business.

Q. I am talking about you. A. No.

Q. Would you recognize your merchandise, your N.R.A. label? A. There was only one N.R.A. label.

Q. Haven't they numbers assigned? A. I cannot recall—they have a serial number.

8811

Q. Would you remember the product of the Greenberg & Shapiro house? A. If I do, I will tell you. Garments can be bought in New York City.

Q. Greenberg & Shapiro's garments can be bought elsewhere? A. In New York City, elsewhere.

Q. Won't you take a look at it? Maybe you can refresh your recollection on the incident. A. I hardly think I could.

Q. Take a look at this garment and see if you

8812

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can remember having any business dealings with Max Rubin when you sold him that. A. Yes, sir, this is one of our garments.

Q. This would help to refresh your recollection? A. No, sir.

Mr. Turkus: For the record, it is a white suit identified by the witness. I will not offer it in evidence.

8813

The Witness: That garment could be bought in any one of the states in the country.

Q. It could be, but I want to know whether it was not bought by Rubin right in Greenberg & Shapiro's. A. I could not answer that.

The Court: It is a palm beach suit.

Mr. Turkus: It is a linen suit.

The Court: A white linen suit.

Mr. Turkus: There are two suits.

8814

The Witness: I don't recall this garment. I don't believe we made the garment this way. I will explain to you why if you want to see it—I mean for identification. The inside vest pocket is different.

By the Court:

Q. What is there about it? A. Can I see it?

Mr. Wegman: May the record show the witness says one of the two garments

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8815

produced by the District Attorney was manufactured by Greenberg & Shapiro and the other was not?

Q. How do you identify it? A. Just in the manner of the way it is made.

The Court: I suggest that this suit be marked for identification. That can be done on the inside of the lining.

The Witness: As you will notice, this is a pocket that is made different. It is basted—a piece of piping.

8816

Mr. Wegman: I think we ought to mark both for identification. One we say was not Greenberg's manufacture.

Mr. Turkus: I have no objection, but do not mark it where it is not visible. I suggest we tie a tag on it.

(Marked Defendants' Exhibit Z-10 for identification—identified garment.)

8817

Mr. Wegman: I have no objection, but I would like it marked as a People's exhibit.

The Court: Yes.

(“Defendants' Exhibit Z-10 for identification” scratched off and garment marked People's Exhibit Z-24 for identification.)

Mr. Wegman: May the record show that these two garments were brought in and produced by the District Attorney?

8818

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The Court: Yes—People's Exhibit Z-24 alleged to be manufactured by Greenberg & Shapiro house.

(Other suit marked People's Exhibit Z-25 for identification.)

By Mr. Turkus:

8819

Q. Referring to People's Exhibit Z-24 for identification, that has the N.R.A. label on inside, isn't that the inside pocket of the garment?

A. Yes, sir, that is. I can see it from here.

Q. That is the label that is put on when it is manufactured under the Men's Clothing Code Authority? A. That is right.

Q. That label has a number? A. I cannot see that.

Q. Take a look at it. Don't you remember from this—you say you are in business with 700 employees. Don't you remember you had a code number under N.R.A.?

8820

Mr. Wegman: Objected to as argumentative and improper in form.

A. That is not one number—that is a serial number. In other words, the next coat after that would have another number, would be 1581721, and next to that 22, 23, 24 and 25.

Q. Isn't that number assigned to Greenberg and Shapiro, isn't that one of your numbers?

A. Those are labels we receive from the retail people and they sell them to whoever asks for them.

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8821

Q. So the retail people have a record of the labels they sell, and the numbers? A. Mr. Turkus, you don't seem to realize. This number is not a number given to the manufacturer. This is a serial number and they are bought in rotation.

Q. Nobody else has that number on their merchandise? A. No, there is not another garment with this number on.

Q. So that the garment can be identified by number as being the product of Greenberg and Shapiro? A. This garment is a product of Greenberg and Shapiro.

8822

Q. And the number will identify it as Greenberg and Shapiro's product? A. In this case it does.

Q. How many years ago was it you manufactured that garment? A. This garment was manufactured for the spring—I cannot be certain about it—but it was in 1934.

Q. Doesn't that garment with the number in it—

Mr. Wegman: I object.

8823

Mr. Turkus: I have not finished.

The Court: Finish your question.

Q. (Continuing) Doesn't that garment with the number in it, a product of Greenberg and Shapiro, now refresh your recollection that you sold it to Max Rubin on one of the occasions he was there at Greenberg and Shapiro? A. No.

Mr. Wegman: My objection is to the one phrase in the question but not to the rest of the question. The witness testi-

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fied that the number has nothing to do with Greenberg and Shapiro, it is only one of the serial numbers on the label and does not identify Greenberg and Shapiro at all.

Mr. Turkus: Let the jury figure that out.

325

Mr. Wegman: I move that the District Attorney be instructed to reframe the question without including that. It is a trick question with that in it, tending to get on the record that the statement from the witness that the number had something to do with Greenberg and Shapiro, where the witness testified it has not.

Mr. Turkus: The "trick" is in the objection.

326

The Court: There is a little confusion, but I think that what the witness tried to say was, being familiar with his own serial number, he could identify approximately the year in which the garment was purchased. We have the same situation here with indictment numbers. This indictment number is 23855. There is no other indictment by that number—that is a serial. A person can tell by looking at the number, and being familiar with the serial number of the indictment, without looking at the date of the indictment, approximately the year the indictment was returned. That is the situation here with this witness. This is causing too much talk.

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8827

Mr. Turkus: For the sake of clarifying the record, may I ask your Honor to inquire of the witness whether your Honor's analysis is correct, or whether the witness said something else.

Mr. Wegman: This is an attempt to drag out cross-examination with speech after speech.

The Court: Every time the Court tries to clarify a situation, counsel picks it up and wrangles about it.

8828

Mr. Wegman: May I take an exception to the suggestion that I am wrangling, and Mr. Turkus' suggestion just stated. I am not attempting to do anything but conduct myself in a perfectly proper legal manner and in accordance with my duties and obligations, and right, as an attorney.

The Court: Proceed.

Q. Let me see if I can refresh your recollection about the Bar Mitzvah. Do you remember the name of Lepke's son, or step-son, who was Bar Mitsvahed? A. Yes.

8829

Q. What was his first name? A. Harold.

Q. Was it at a church or a synagogue at 72nd Street and Columbus Avenue? A. I think it was.

Q. Was the reception thereafter at the home of Lepke? A. I was not there.

Q. You went to the church? A. I went to the synagogue.

Q. Do you remember now, having the place

8830

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fixed, what other persons were there at the Bar Mitzvah? A. I could not honestly say.

Q. Getting back to the officers of the Greenberg and Shapiro, how many times was Oscar Frankel up there? A. The name is familiar, but I cannot place the individual.

Q. Did you ever see Murray Weinstein up there? A. No, sir.

Q. You know Murray Weinstein? A. By sight.

8831

Q. Was Sam Katz ever up there? A. Yes, sir.

Q. And Sam Katz was a union official with the Amalgamated? A. That is right.

Q. Holding a job which is immediately under the job that Murray Weinstein had? A. That I would not know.

Q. Benny Levine, how many times was Mr. Levine up at Greenberg and Shapiro's? A. I don't recall.

Q. Let me see if you can remember any visits to Greenberg and Shapiro by one "Joe Strawberry"? A. I cannot recall.

8832

Q. Is the name familiar? A. It sounds familiar, yes, sir.

Mr. Wegman: One half of the witness' answers are not audible. I would like the witness to keep his voice up.

The Court: Yes, speak loudly.

Q. Is it familiar through Greenberg and Shapiro? A. No, sir.

Q. Is it familiar through something else? A. No, sir.

Q. It is just a familiar name? A. It is a name I have heard.

Q. You don't recall where you heard it, or to what person you associate that name? A. The name sounds familiar, but just where I could put my finger on it, I cannot tell you.

Q. It was not in the public school? A. No, sir.

Q. It was not playing marbles or flying a kite?

Mr. Wegman: Now, if your Honor please, I object to that. There is no evidence in this record that this witness ever flew a kite or played marbles.

8834

The Court: Objection overruled.

Mr. Wegman: Exception.

Q. I assume you did, when you were a boy, play marbles? A. You see, I have been working since I have been seventeen.

Q. Yes or no. A. I don't recall if I ever did.

Q. And you don't remember flying kites? A. I did fly kites.

Q. You did not fly kites with Joe Strawberry? A. No, sir.

8835

Q. You did not visit Joe Strawberry at his home? A. No, sir.

Q. Or he at your home? A. I don't recall that individual.

Q. I am trying to refresh your recollection to find out in what way the name Joe Strawberry is familiar to you. A. I cannot honestly say. I might put my finger on him.

Q. How often was Joe Riccobone up there? A. I don't recall that name.

8836

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Q. Is the name Joe Riccobone familiar? A. No, sir.

Q. Hymie Yuran, did he ever come up? A. The name sounds familiar.

Q. Hyman Yuran did not go to school with you? A. I don't think he did, no, sir.

Q. The familiarity is not due to any social or club contact or affiliation? A. No, sir, I just heard the name somewhere; I cannot just place it.

8837

Q. Can you refresh your recollection as to where the name Hymie Yuran became familiar to you? A. I cannot put my finger on it.

Q. At the office of Greenberg and Shapiro? A. No, sir.

Q. Would you say you were familiar with the name from something other than the office of Greenberg and Shapiro? A. I cannot say.

Q. Now, how many times was Moe Wolinsky, or "Dimples", up there— Morris Wolinsky, alias "Dimples"? A. I cannot recall.

8838

Q. Is the name familiar to you? A. "Dimples", yes, sir.

Q. I am not asking you about dimples on anyone except Mr. Wolinsky, who was called "Dimples". A. I got your question. The name of "Dimples" sort of brings to me the fact I have heard the name before.

Q. You did not go to public school with "Dimples"? A. I don't believe I did.

Q. Have you been to "Dimples'" home? A. No, sir.

Q. Or he to yours, or any club contact? A. No, sir.

Q. Doesn't the office of Greenberg and Shapiro

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8839

jog your memory now as to your familiarity with "Dimples"? A. That sounds very far back.

Q. Do you place "Dimples' " face? A. No, sir.

Q. Take a look at this and see if it refreshes your recollection.

Mr. Wegman: I would like to put on the record the display of these pictures in the presence of the jury. It is calculated to prejudice—pictures of persons the witness has not identified and has not said he knows. And in the form in which these pictures appear, it is intended and calculated to create a prejudicial effect.

8840

The Court: Objection overruled.

Mr. Wegman: Exception.

Mr. Turkus: May the record show that the jury does not see these pictures? The pictures are held with the back towards the jury.

Mr. Wegman: The pictures are displayed on the District Attorney's table right in front of the jury.

8841

Mr. Turkus: That is assuming the jury is looking at the District Attorney's table instead of at the witness. That is an implication against the jury.

The Court: It makes no difference. Go ahead.

(Pending question read to witness.)

A. I cannot recall that.

Q. Well, take the name of Tannenbaum, and Buggsy Workman, Louis Kravitz, and Farvel Cohen, doesn't Dimples Wolinsky come back to

8842

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your mind as having been in Greenberg and Shapiro's?

Mr. Wegman: I object to that as argumentative, impairing the witness' answer that he does not know the individual. It is a collateral matter and the District Attorney is bound by the answer.

The Court: Objection overruled.

Mr. Wegman: Exception.

8843

(Pending question read to witness.)

A. It does not.

Q. Is the name Cuppie familiar, a familiar name? A. Yes, sir.

Q. Is that Kopplewitz? A. I did not know the second name.

Q. Didn't you see Cuppie at Greenberg and Shapiro's? A. The name is not very familiar.

8844

Q. But, Mr. Shapiro, doesn't it help to refresh your recollection as to familiarity with the name Cuppie, to associate it with "Dimples", and "Bugs", and "Little Farvel," doesn't that help you fix Greenberg and Shapiro's as the place of familiarity? A. No, sir.

Mr. Wegman: I object to that as improper in form, argumentative, improper cross examination on a collateral matter, having nothing to do with the issue in this case, or the credibility of the witness.

The Court: Objection overruled.

Mr. Wegman: Exception.

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8845

Q. Bruno Belea, is that a familiar name? A. No, sir.

Q. You never heard the name of Bruno Belea? A. No, sir.

Q. You have been in the clothing business for two years with Greenberg and Shapiro, and since 1935 with the Raleigh? A. Yes, sir.

Q. And you never heard the name of Bruno Belea? A. No, sir.

Q. Isn't he an organizer for the Amalgamated Union? A. I don't know.

8846

Q. You are non-union? A. Today, yes, sir.

Q. Today—well, the Raleigh was always non-union? A. No, sir.

Q. We will come to that a little later. How about Meyer Luckman, is that a familiar name to you? A. No, sir.

Q. Take it in association with Max Silverman and Greenberg and Shapiro, doesn't that help you to refresh your recollection? A. The name Max Silverman sounds familiar, but I cannot place the individual.

Q. Concerning the familiarity with Max Silverman, he is a man in the late fifties, isn't he? A. I don't know.

8847

Mr. Wegman: I object. I have been trying to state that this question is on a collateral matter. The witness has answered and the District Attorney is bound by that answer. The question is improper.

The Court: Objection overruled.

Mr. Wegman: Exception.

8848

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Q. Well, let us see if you can refresh your memory with the name Wolfy Goldis, if you will? A. It sounds familiar.

Q. Don't you link Wolfy Goldis and Max Silverman and Meyer Luckman as visitors at Greenberg and Shapiro's? A. I could not say.

8849

Mr. Wegman: I object to the question. The witness has already answered the question but I should like the record to show my objection to this entire line of procedure of questioning—questions of the nature of the one just asked. My objection is based upon the ground that the nature of the question is such that it is intended for the purpose of creating prejudice, creating atmosphere, and the answer to the question binds the District Attorney. As a matter of law, these questions do not affect the credibility of the witness in the slightest degree. They are wholly collateral to the issue on trial and they have simply that one purpose of trying to create atmosphere by the recital of a list of names. I ask your Honor, in order that I may not have to get up repeatedly with these objections, to rule on that objection, and to instruct the District Attorney not to follow these questions up.

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The Court: You take much time in stating a simple objection that could have been put in a half a dozen words. The purpose of cross examination is thwarted with this constant interruption,

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which is calculated to give the witness a chance to think over.

Mr. Turkus: And there has been a signal to the witness about being bound by the answer.

The Court: The Court knows the purpose of this.

Mr. Wegman: I except to that remark, and I ask the record to note my exception to your Honor's remark and to Mr. Turkus' remark. I say to your Honor this, my conduct is not improper, or unethical, or illegal, or anything other than my obligation as an attorney and my duty as such. Your Honor may, here and now, excuse the jury and let us try out that issue.

8852

The Court: Stop your nonsense. Sit down.

Mr. Talley: I wish to take exception on behalf of the defendant Weiss to your Honor's comment and criticism of counsel at this stage of the case.

8853

The Court: Constant interruption of cross examination for no legitimate purpose must stop. Objection must be stated simply and the Court will rule simply without this constant delay, and colloquy which gives an obvious breathing time to a witness in which his mind has a chance to turn over. I want to have no more of this interruption except it is legitimate.

Mr. Talley: I take exception to your Honor's remarks as prejudicial, not only

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to Mr. Wegman's client, but to all the clients, all the defendants in this case.

The Court: Does any other counsel wish to be heard?

Mr. Wegman: May I note on the record a motion for the withdrawal of a juror and the declaration of a mistrial on the ground of prejudice created by your Honor's remarks, and may I also note on the record my personal resentment to those remarks as an unwarranted reflection on me. And I request the Court that this issue be tried out, because I am not accustomed to having my integrity attacked.

The Court: Sit down. Motion denied.

Mr. Wegman: I except.

The Court: Now, the motion for the withdrawal of a juror and a mistrial.

Mr. Wegman: I make that motion.

The Court: Motion denied.

Mr. Wegman: Exception.

8855

8856

By Mr. Turkus:

Q. How many times was Henzy Teitelbaum up to Greenberg and Shapiro's? A. He was there quite a few times.

Q. In two years, how many times would you say? A. I could not answer that.

Q. Often? A. He was up there from time to time.

Q. From time to time, on an average of how many times a week? A. I could not say.

Q. His visits were quite regular, weren't they?

A. No, sir, they were not regular.

Q. Spasmodic? A. Spasmodic.

Q. During the two years you were up there, can you estimate the number of visits that were made by Henzy Teitelbaum? A. No, sir.

Q. Would you say ten? A. Yes, sir.

Q. Would you say twenty? A. I could not put a figure on it.

Q. We got an average of ten. Less than fifty?
A. I can hardly answer that.

8858

Q. Can you encompass it between ten and twenty? A. I would not begin to put a figure on it.

Q. Henzy Teitelbaum did not come to see you up there? A. No, sir.

Q. When you saw Henzie Teitelbaum up there, did you see him with The Bug, and Little Farvel and Louis Kravitz? A. He was there. Just when and who was with him I cannot answer.

Q. He did not come up to see you? A. No, he did not.

Q. He did not come up to see Gurrah? A. Yes, he would see Charlie.

8859

Q. Wasn't Henzie Teitelbaum Lepke's chauffeur? A. He drove Louis around, yes.

Q. Then wasn't he up there to see Louis? A. Louis was up there seldom.

Q. The chauffeur was up there ten times or more and Louis the boss, was up there seldom, is that it? A. Yes.

Mr. Wegman: I object to the question.

Q. And the chauffeur was up visiting your

8860

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brother? A. No, he would sit around sometimes; whether he came up to visit him or converse with him I could not answer.

Q. That was not driving his automobile in the office of Greenberg and Shapiro, was it? A. Not very well.

Q. Whom did he visit up there? Can't you remember who Lepke's chauffeur visited on these occasions? A. No, I would not know.

8861

Q. Is it that you would not remember or you cannot remember? A. I cannot answer a question like that.

Q. Julie Martin—how many times did Julie Martin come up? A. I don't recall that name or individual.

Q. Julie Martin— A. I would not know.

Q. Let us see if I can refresh your recollection. Did Dutch Schultz ever come up? A. I don't believe so.

Q. Do you know Dutch Schultz? A. No, I don't.

8862

Q. You know of him through something or other, don't you? A. Publicity.

Q. Does it refresh your recollection when I tell you that Julie Martin was the chief lieutenant for Dutch Schultz? Does that refresh your recollection?

Mr. Wegman: I object to that, if your Honor pleases.

Mr. Turkus: You object when I finish and then you will have a proper objection.

Q. Does it refresh your recollection that Julie Martin was up at the office of Greenberg & Shapiro?

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Mr. Wegman: Now may I note my objection?

The Court: Overruled.

Mr. Wegman: May I have the record note that I am refraining from elaborating on the grounds of objection because of the Court's earlier remarks.

The Court: You are making a speech nevertheless and that takes time and the Court objects to being used in this manner.

8864

Mr. Wegman: I except to your Honor's remarks and I move for the withdrawal of a juror and a declaration of a mistrial both because of the question that was asked and because of your Honor's remarks.

The Court: Anybody else? Overruled. Denied.

(Pending question read.)

A. I don't know that individual.

Q. And the name of Julie Martin is not at all familiar? A. No, sir.

8865

Q. Since I have conducted this interrogation about The Bug and Kravitz and Farvel Cohen and Sam Feinstein, Izzy Bartfield, Shimmy, Danny Fields, Yeggo Feinberg, Berger and Rubin and Benny Levine and Joe Strawberry and Riccobone and all of these names, has your memory since that time been refreshed as to their appearances in Greenberg & Shapiro? A. That is a very broad question. I cannot answer that.

Q. Any of the names? A. Some of the people were up there that you mentioned, yes.

8866

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Q. Willie Alberts, and Willie ever visit up there? A. The name sounds familiar.

Q. Well, is not the familiarity due to Greenberg & Shapiro offices? A. I don't know.

Q. Well, Willie Alberts was not a school mate? A. No.

Q. Not a social acquaintance? A. I cannot place the individual. I could not answer that.

8867

Q. Let us see if we can place it this way. Lepke and Gurrah and The Bug and Farvel Cohen and Louis Kravitz, does that help fix your recollection that Willie Alberts was up there in their company at Greenberg & Shapiro? A. The name sounds familiar but I cannot place it. Whether I know him or not, I don't know.

Q. The suggested names are of no help? A. No.

Q. In your recollection?

8868

Mr. Wegman: If your Honor pleases, is not the purpose of the District Attorney too obvious, a little bit too obvious, in the constant recital of these names as to which the witness has answered repeatedly? I object to that form of question and I again ask your Honor to instruct the District Attorney to desist from it.

The Court: Overruled.

Mr. Wegman: Exception.

Q. To bring it right into a short sentence, wasn't the office of Greenberg & Shapiro a hangout? A. No, sir.

Q. When did you dissociate yourself from your partner Greenberg? A. Early in 1935.

Q. And that is when you joined the Raleigh, isn't that right? A. That is the time we formed Raleigh and took up the assets and liability of Leo Greenberg and Shapiro.

Q. What time in 1935 did the people whom you described as "we" form the Raleigh? A. It was May or April, 1935.

Q. How many employees did Greenberg & Shapiro have? A. Well, we had a few because we did not manufacture direct.

Q. But tell me how few the few were? A. Oh, less than fifty. 8870

Q. And Greenberg & Shapiro was wound up, wasn't it? A. Dissolved.

Q. The "we" did not include your former partner, Greenberg, as coming into the Raleigh, did it? A. No, it didn't.

Q. And the Raleigh was formed before the Dewey investigation, wasn't it? A. That is right.

Q. Who were the original stockholders? A. In Leo Greenberg & Shapiro?

Q. No, Raleigh. A. Nathan Borish, Carl Shapiro and Sam Smith. 8871

Q. Is Sam Smith a relative? A. Yes, he is my brother-in-law.

Q. Your brother-in-law? A. That is right.

Q. Are you married to his sister? A. No, he is married to my sister.

Q. So that he is a brother-in-law to Gurrah as well? A. That is right, Jacob Shapiro.

Q. Did Lepke and Gurrah never have an interest in Raleigh financially? A. No.

Q. Gurrah only? A. No. I was going back to Leo Greenberg and Shapiro.

8872

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Q. Greenberg & Shapiro, did Lepke have an interest in that? A. No, my brother had an interest in Leo Greenberg and Shapiro.

Q. What interest did Gurrah have? A. He had a twenty per cent interest.

Q. And when that firm was liquidated and the assets, as you described, transferred to the Raleigh, what happened to Gurrah's twenty per cent interest? A. That was adjusted between Jacob Shapiro and myself.

8873

Q. So that you and Gurrah adjusted that personally? A. I satisfied that.

Q. You are not fronting for him now in Raleigh, are you? A. No, sir; nor did I ever front for him.

Q. You have seen him recently, haven't you? A. In a visit, yes.

Q. Talked this case over with him? A. No, sir. I have not seen him now in over a year.

Q. Oh, you have seen him more recently than that, haven't you? A. No, sir.

8874

Q. Haven't you seen him in the last few months?

Mr. Wegman: If your Honor pleases, let the record show that the District Attorney is in a position to know that his question supposes a state of facts directly contrary to the fact. The fact of the matter is, and richly ascertainable by the District Attorney, that Jacob Shapiro has not been permitted to have visitors for over a year, so that he could not have seen him in that time. It is immaterial, it is collateral, it has nothing to do with the

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8875

credibility of the witness, and it is intended to prejudice.

Mr. Turkus: Why not substitute witnesses here? Would you rather sit up there?

Mr. Wegman: If you want me to, Mr. Turkus, and call me to the stand, I will be glad to testify.

Mr. Turkus: I will get as much out of you as out of him.

Mr. Cuff: I object to that.

8876

Mr. Wegman: That is perfectly all right, Mr. Cuff. This witness is telling the absolute truth and you will get that from me and if you are implying that I do not tell the truth or that the witness is not telling the truth because he will testify as I would testify, let us have that on the record, Mr. Turkus.

Mr. Turkus: I am sorry I started that.

Mr. Wegman: I paid ten dollars the other day for contempt of court—

Mr. Turkus: I am ready to proceed.

8877

The Court: Mr. Wegman said something I want repeated here. I do not know if I understood it correctly. What was that about Mr. Wegman vouching for the truth of the witness?

(Remarks of Mr. Wegman read.)

The Court: Mr. Turkus, according to Mr. Wegman he knows these things himself.

Mr. Wegman: That is not so, your Honor.

The Court: That would place his posi-

8878

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tion a little beyond the relation of attorney and client in this case. You may consider that an offer by him seriously to testify in this case.

Mr. Wegman: If your Honor pleases, there was no such implication in my statement. Mr. Turkus asked me if I wanted to take the stand. I said if he wanted me to do so to call me, I was perfectly willing to take the stand, and if he asked me questions the answers he would get would be the absolute truth and I stated my belief—

The Court: Wait a minute. You said something there which is not quite consistent with the halo. Resume the trial.

Mr. Wegman: I take exception to the remark. May it be clear that my reference was to the visits between this witness and Jacob Shapiro.

The Court: The Court interprets your comment to mean you have knowledge of these matters yourself—

Mr. Wegman: Then the Court's interpretation is wrong.

The Court: —more than your relation as attorney, and if you claim to have knowledge of these matters you are properly a witness in this case and could be called by either side.

Mr. Wegman: The Court's interpretation is wrong. The Court has no basis for that interpretation, in my humble opinion. I made no such statement. I certainly have no personal knowledge of

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8881

any of the facts that are involved in this case as a case. I do have knowledge about the fact that this witness has not visited his brother in a number of months because I have had something to do with that. I have personal knowledge as to that. If the Court wishes to imply something else from my statement, the Court's mind is wrong on that and misinterprets my statement. I should like to have it made clear. I say again that if Mr. Turkus—

8882

The Court: You said it once. That is enough.

Mr. Wegman: —calls me, I am willing to take the stand.

The Court: Let us have peace, as General Grant said. It does not occur to you, by any possible chance, that you should withdraw what you said and which the Court caused the stenographer to repeat?

Mr. Wegman: May I make clear my meaning on the record?

The Court: Yes or no.

8883

Mr. Wegman: I did not hear all your Honor said.

The Court: Oh, you were not listening! Please repeat.

(The remarks of the Court starting with "It does not occur to you" were read.)

Mr. Wegman: May I say—

The Court: Yes or no?

Mr. Wegman: If it carries that implication, I withdraw it, but I don't believe it carried that implication.

8884

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The Court: The Court does not construe but the Court knows the meaning of plain English language.

Mr. Wegman: Well, the Court and I may differ on that, with all due respect to the Court.

The Court: Wait a minute. I did not believe my ears when I heard that said. I had to get the stenographer to repeat it before I could realize that a member of the Bar had said it. Now let this be an end to the incident.

8885

Mr. Wegman: May I have an exception to your Honor's remark?

The Court: Let this be the end, but the halo fell from your head.

Mr. Wegman: What is that?

The Court: The halo that you claim.

Mr. Wegman: I have never claimed a halo. I do not know whether we are trying this case for the defendants or whether your Honor has put counsel for defendants on trial. I should like to have that made clear on the record.

8886

Mr. Turkus: I am sure the jury is not confused as to who is being tried. Let us get along with the case.

The Court: Counsel has got up repeatedly and said he was trying this case on a highly ethical plane.

Mr. Wegman: I believe I am.

The Court: Will you please keep still while the Court is talking and will you please take your seat? (To reporter) What was I saying?

(Remarks of the Court beginning "Counsel has got up repeatedly" were read.)

The Court: I would say a hundred per cent. The Court listened to that and for that reason was rather astonished when that statement was made which is now repudiated by counsel who made it. That is what the Court meant by the "halo". Let it go at that. There is no halo.

Mr. Wegman: May I ask whether that remark was intended by the Court to indicate that I am trying this case on anything other than a highly ethical plane, because, if it is, I ask that that issue be tried out summarily.

8888

The Court: Please sit down and behave yourself. Continue.

By Mr. Turkus:

Q. The firm of Greenberg & Shapiro, was that a New York corporation? A. Yes, sir.

8889

Q. The Raleigh, however, was a Maryland corporation? A. No, the Raleigh Manufacturers is a New York corporation.

Q. Formed under the laws of the State of New York? A. That is right.

Q. As a corporation. You know Whitey Deutsch, don't you? A. Yes.

Q. How long do you know Whitey Deutsch? A. Oh, that is getting back to the time I was about 12 or 13 years old.

Q. I know, but your familiarity with him kept up through the years, didn't it? A. Yes.

8890

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Q. You and Whitey Deutsch are friendly? A. I have not seen him in quite some time but we are not unfriendly.

Q. And the last occasion you saw him was a business occasion, wasn't it? A. Yes.

Q. You had business with Whitey Deutsch? A. Yes, he is—

Q. Just answer yes or no. We will get along very nicely. A. A clothing manufacturer.

8891

Q. And was Whitey Deutsch a visitor up at Greenberg & Shapiro? A. Very seldom. He was a competitor.

Q. The manufacturing plant of the Raleigh was never located in New York City, was it? A. Well, few clothing concerns are located—

Q. I am talking about the Raleigh. The Raleigh itself never had its manufacturing plant in New York City, did it? A. The Raleigh?

Q. Yes. A. No, never did.

Q. Where was the first plant? A. The first and only plant is in Baltimore, Maryland.

8892

Q. Why, didn't they have a plant in Egg Harbor, New Jersey? A. Not Raleigh.

Q. Who had the plant in Egg Harbor? A. Leo Greenberg and Shapiro. That was a contract shop.

Q. What about the plant in Vineland, New Jersey; which outfit had that? A. We had a plant—

Q. When you say "we" which is it? A. Leo Greenberg and Shapiro. I am sorry.

Q. Was it through Murray Weinstein that the Raleigh opened up its manufacturing plant in Baltimore? A. No, sir.

Q. Wasn't it Whitey Deutsch who set up the

machinery in Baltimore for the Raleigh? A. Well, he supervised in setting up this plant.

Q. You had only had two years of experience in clothing, hadn't you? A. Two and a half years.

Q. All your life before that had been devoted to embroidering? A. Cleaning, stitching.

Q. Cleaning, stitching, and embroidering? A. Yes.

Q. That is an entirely different field from clothing, isn't it? A. Very far.

8894

Q. So Whitey Deutsch who had been your competitor supervised the set-up of the machinery for the Raleigh in Baltimore? A. At that time we were negotiating to merge.

Q. Did Whitey Deutsch ever merge with the Raleigh? A. No, sir.

Q. The only thing that the Raleigh had in New York was that office which consisted of a show-room only; isn't that right? A. It is a buying office and show-room.

Q. It was that three room office at 200 Fifth Avenue? A. That is right.

8895

Q. All you had there were some swatches and a couple of samples of garments? A. That is right.

Q. When was the Raleigh plant established in Baltimore? When was all the machinery installed and the plant starting to go? A. Well, I believe the first completed garment was some time in January, 1936.

Q. The books of the Raleigh Company were not kept in the show-room, were they? A. No, they were kept in—

Q. Baltimore? A. Duplications of it, yes.

8896

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Q. Why, weren't the books of the Raleigh kept in Baltimore to thwart a Dewey investigation?

Mr. Wegman: I object to that.

A. That is very unfair, Mr. Turkus. We conducted our business in Baltimore and the buying, that is in New York.

8897

Q. Just answer me that question, didn't you keep the books of the Raleigh in Baltimore to keep them out of Dewey's hands? A. No, sir.

Q. Did the Raleigh books ever reach Dewey's office? A. No, sir,—yes, sir, I think they did.

Q. What books? A. I think at some time they were subpoenaed and we delivered them to the officers.

Q. What books were those that were delivered to Mr. Dewey's office? A. Books of Raleigh Manufacturers, if I remember correctly.

8898

Q. What books? Describe the books. A. The books that were asked for. I will check it back and let you know.

Q. Have you got the Raleigh books in the New York office now? A. Sure we have.

Q. All of the Raleigh books? A. No, not all, no.

Q. All of the Raleigh checks? A. No. Checks written in New York are in New York and then in turn sent down to Baltimore.

Q. The checks written in Baltimore in Baltimore? A. That is right.

Q. And the things written in books in Baltimore are still in Baltimore? A. Sure.

Q. And the things written in New York are in New York? A. That is right.

Q. But the Baltimore books never got up to Dewey's office, did they? A. Some books were called for.

Q. From Baltimore? A. Yes, sir, I believe so.

Q. The books that you wanted to produce? A. Any books that were asked for, Mr. Turkus; in fact, I will let you have them now, if you want them.

8900

Q. The Baltimore books? A. Any books.

Q. Back to 1935? A. Whichever records we have.

Q. Have you got the records for 1935 when the company was formed, including the complete set-up of your stocks and your finances, and showing the complete financial arrangements and each and every check that cleared through the Raleigh's books anywhere? Have you got those books? A. Sure.

Q. And will you kindly bring them up? A. If you want them.

8901

Mr. Turkus: The invitation is accepted.

Mr. Wegman: If your Honor pleases, Mr. Turkus is certainly welcome to examine those books.

Mr. Turkus: He said so. He does not need any help from you.

Mr. Wegman: I have a right to make a statement on the record.

The Court: You have not. Sit down.

Mr. Wegman: I except. Do I have a right to make an objection?

8902

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The Court: Object and say nothing more.

Mr. Wegman: I object to Mr. Turkus' request of this witness on the ground that it has nothing to do with this case.

The Court: Overruled. Sit down.

Mr. Wegman: Exception.

8903

Q. Now, when you opened up and you turned out your first garment of the Raleigh, you were running non-union, weren't you? A. Yes.

Q. And your brother at that time was with others representing the union in making union shops in New York? A. That I could not answer.

Q. You don't know that? Wasn't that the purpose, with the request to the union, to avoid argument with other manufacturers, that your plant was moved down to Baltimore? A. No, sir; in fact, the union is trying to organize us and has been trying to organize us for years.

8904

Q. But they have not succeeded, have they? A. That is the will of the people.

Q. Now, we will go right into that. I am very glad that we opened that up. And at the time that the union was trying to organize Baltimore, the Raleigh in Baltimore as a union shop, when was that, the first time? A. They never were a union shop.

Q. I know, but when the union was trying to organize and make the Raleigh a union shop, when was the first time? A. From the very inception.

Q. Right. And when it started, when the

union started, didn't you send Paul Berger over to Murray Weinstein to pull the union off?

A. No, sir.

Q. That never happened? A. No, sir.

Q. And didn't Paul Berger come back with the message, "Wait until Gurrah gets out of the can and it will be adjusted then"? A. No, sir.

Q. The fact is that the Raleigh has never as yet been unionized, has it? A. No.

Q. Leo Greenberg, your former partner, came down to Baltimore, didn't he? A. No, sir.

Q. Why, didn't Leo Greenberg open up a shop in Baltimore? A. Not for Raleigh.

Q. Don't you know that? A. Not for Raleigh.

Q. No, not for Raleigh, for himself? A. That I would not know.

Q. Do you know Blumberg? A. I met Mr. Blumberg.

Q. Who is Mr. Blumberg? A. He is an official of the union.

Q. In Baltimore? A. In Baltimore.

Q. Yes. Why, didn't you get somebody from New York to come down by a plane to Baltimore and get to Blumberg and shut up Leo Greenberg because he was not union? A. That is hardly the facts and I resent that.

Q. Did Danny Fields come down to Baltimore in an aeroplane? A. I don't know a thing about that.

Q. You do not know the first thing about it? A. No, sir; that is not the truth.

8908

Carl Shapiro—For Defts.—Cross

Q. Do you know whether that was done for you? A. No, sir.

Q. When Greenberg and Shapiro were present once, when a lady by the name of Ida Schachter came in? A. The name is not at all familiar.

Q. Do you remember the name of Harry Greenberg alias Big Greenie? A. That is far back.

Q. Yes, as far back as 1935? A. Further than that.

8909

Q. Wasn't Big Greenie's wife in and didn't she hold a conversation with Lepke when you were there, in Greenberg and Shapiro? A. I would not know.

Q. See if this refreshes your recollection: Wasn't there some talk that Big Greenie was coming back from Poland? A. I would not know that.

Q. Unless he got some money? A. I don't know a thing about that.

Q. Are either Lepke and Gurrah directly or indirectly receiving any funds or benefits from the Raleigh Clothing?

8910

Mr. Wegman: I object to the question, the form of the question, and also to the intent of the question.

The Court: Overruled.

Mr. Wegman: Exception. May I ask your Honor to have the stenographer repeat it verbatim for you so that your Honor may rule?

Mr. Turkus: I have no objection. Read it. If it is objectionable we will revise it. (Pending question read.)

Carl Shapiro—For Defts.—Cross

8911

Mr. Turkus: It may be confusing in that way.

A. None whatever.

The Court: It is not confusing.

Mr. Turkus: He has answered, none whatsoever.

Q. Is any person in behalf of either Lepke or Gurrah getting any money or any benefits directly or indirectly from the Raleigh? A. The wife of Louis Buchalter is a stockholder in our Baltimore corporation.

8912

Q. Oh! I see. I forgot to talk about the Baltimore corporation. What is the set-up there? Who are the stockholders there? A. Nathan Borish, Samuel Smith, Betty Buchalter, Anna Shapiro.

Q. What is the other Shapiro? A. Anna Shapiro, my sister-in-law; and Carl Shapiro.

Q. Baltimore is where the manufacturing plant is, isn't that right? A. That is right.

8913

Q. Baltimore is where the seven hundred employees are? A. That is right.

Q. Baltimore is where you get all the cloth and manufacture the garments? A. That is right.

Q. Baltimore is where you get the money for the sale of the garments? A. Well, no.

Q. You get that in New York? A. No.

Q. Both places? A. No; there is two corporations, if you want me to make that clear, Mr. Turkus, I will be glad to.

Q. Wait, let me see if I cannot make it clear

8914

Carl Shapiro—For Defts.—Cross

myself. I want to help myself as much as I can. The Baltimore corporation, that is under the laws of the State of Maryland? A. That is right.

Q. That is a usual place for incorporations where people don't like corporate trouble, isn't that right?

Mr. Wegman: I object to that, if your Honor pleases.

8915

A. That is ridiculous.

The Court: Sustained.

Mr. Turkus: Excuse me, your Honor, the form was rather bad.

Q. But I mean all Maryland corporation laws are rather loose, aren't they? A. I don't know, I am not a lawyer.

Mr. Wegman: I object to that.

8916

The Court: Sustained.

Q. Let me ask it in this way: Isn't Baltimore a favorite place for incorporations?

Mr. Wegman: I object to that.

The Court: Sustained. Nothing more on that.

Mr. Turkus: Yes, your Honor.

Q. In the Baltimore set-up what is it incorporated for? A. As I explained to you earlier in the day—

Carl Shapiro—For Defts.—Cross

8917

Q. How much is it incorporated, fifty thousand, a hundred thousand? What is the incorporation? A. Well, it was incorporated for twenty thousand dollars, that is paid in capital. It is incorporated for a much larger—just how much I could not say.

Q. How much? A. Paid in capital was twenty thousand dollars.

Q. What is the amount of the incorporation, a hundred thousand, five hundred thousand? A. I would not know. I would have to check it.

8918

Q. Well, the net worth of the Baltimore corporation is over a quarter of a million, isn't it? A. No. Ridiculous.

Q. Did you ever have any ratings from Dun & Bradstreet's?

By the Court:

Q. What is the authorized capital stock? A. Your Honor, I am sorry, but I don't know that. It is beyond twenty thousand dollars.

Q. That is an important thing and you should know it. A. Well, it is true, I should know it.

8919

Q. Secretary and treasurer. A. No, of the Baltimore corporation I did not hold an office until lately. I was just a stockholder.

Q. Do you sign the reports? A. I did. Just lately. As far back only as two years ago.

Q. Don't the shares of stock contain the authorized capitalization? A. Not on the stock itself. I think it is capitalized for over a hundred thousand dollars but the paid in capital is twenty thousand dollars.

Q. You said that before, but the authorized capital is over a hundred thousand? A. I believe it is.

8920

Carl Shapiro—For Defts.—Cross

Q. Is it a million? A. No, I don't think it is.

By Mr. Turkus:

Q. Let me ask you this: Did you ever submit a report to Dun & Bradstreet's? A. There was no need for it. No, we did not.

Q. You don't need any credit? A. Not for anything that the Baltimore corporation requires.

8921

Q. Well, did you submit any Dun & Bradstreet report for the New York corporation? A. Yes.

Q. Did you in that report say the assets of the New York corporation were in excess of a quarter of a million?

Mr. Wegman: I object to it, if your Honor pleases; improper question, has no relation at all to the credibility of the witness.

The Court: Overruled.

8922

Mr. Wegman: Improper in form, and collateral matter.

The Court: Overruled.

Mr. Wegman: Exception.

Q. Is the name Philip Kasacove familiar? A. Yes.

Q. He was the accountant for the Raleigh, wasn't he? A. Yes.

Q. He was at one time secretary of the Raleigh, wasn't he? A. He is today.

Q. What is the net worth of the New York corporation?

Carl Shapiro—For Defts.—Cross

8923

Mr. Wegman: I object to that, if your Honor pleases, immaterial, irrelevant.

The Court: Overruled.

Mr. Wegman: I object on the further ground it has nothing to do with the credibility of the witness; collateral matter.

The Court: Overruled.

Mr. Wegman: Exception.

Q. As secretary and treasurer do you know it? A. Yes.

8924

Q. What is it? A. The net worth is about \$275,000.

Q. \$275,000? That is more than a quarter of a million. A. You asked me on the Baltimore corporation.

Q. Oh, all right. Now let us get to the Baltimore corporation. What is the net worth of the Baltimore corporation where all the machinery is, where the plant is, where all the clothing is, and the seven hundred employees?

Mr. Wegman: If your Honor pleases, I object on the same grounds as I urged an objection to the previous question with relation to the New York corporation. It is a collateral matter, wholly immaterial, irrelevant, and has no possible bearing on the credibility of the witness.

8925

The Court: Overruled.

Mr. Wegman: Exception.

The Court: You see, Mr. Turkus, in corporation affairs there can be any number of subsidiaries, including ownership of the plant.

8926

Carl Shapiro—For Defts.—Cross

Mr. Turkus: I would like the witness to testify, Judge.

The Court: He has not said that. He has not said that the ownership of the plant and its values was included in the twenty thousand paid in capital.

Mr. Turkus: I am trying to find this out.

The Court: That could be a lease matter.

8927

Mr. Turkus: Has your Honor sustained the objection?

The Court: No, I am just suggesting this to you.

Mr. Turkus: I will go into that very quickly but may I get an answer to this question?

The Court: I think you are a little confused in what you are just asking between the comparatively small amount of actual paid in capital and the size of the plant.

8928

Mr. Turkus: I am not confused.

The Court: That must employ six or seven hundred hands.

Mr. Turkus: I am not confused when I see these figures, Judge. I am not a child.

By Mr. Turkus:

Q. Will you answer that question? A. What was the question?

(Pending question read.)

Carl Shapiro—For Defts.—Cross

8929

A. The net worth of the Baltimore corporation today is about sixty or seventy thousand dollars.

Q. Sixty or seventy thousand? A. That is right.

Q. That is the one in which Louis Buchalter's wife has the interest? A. That is right.

Q. The sixty or seventy thousand dollars? A. That is right.

Q. She has no interest nor has he in the \$275,000 corporation? A. No.

8930

Q. Greenberg and Shapiro—what was the net worth of that when it was wound up, or was it a liability? A. It was not a liability. It was around eighty thousand. I am not quite sure on the figures.

Q. What interest has Betty Buchalter in the sixty or seventy thousand dollar corporation?

Mr. Wegman: I object to that, if your Honor pleases, not relevant, immaterial, wholly collateral, has nothing to do with the credibility of the witness.

8931

The Court: Overruled. What did the witness say was the net worth of Greenberg and Shapiro?

Mr. Turkus: About eighty thousand.

Mr. Wegman: He said he was not sure of it.

The Court: You may now answer the last question.

(Pending question read.)

A. Twenty-five per cent interest.

Q. That twenty-five per cent interest, does it

8932

Carl Shapiro—For Defts.—Cross

give her \$400 a week? A. I could not answer that from a weekly basis but at the end of the year I would say that the dividends of that corporation exceed \$10,000.

Q. So that—

8933

Mr. Wegman: Pardon me, Mr. Turkus. The witness answered, if your Honor pleases, before I had a chance to state my objection. I should like to have the record note my objection to the question and my motion to strike out the answer on the ground that the question is wholly immaterial, irrelevant, incompetent, and has no bearing whatsoever on the credibility of the witness. It is a wholly collateral matter, not related to this case whatsoever.

8934

The Court: The Court takes the view that when the witness takes the stand and testifies that a certain conversation was not held on a specific date several years ago, at the office of the Raleigh in New York, and that certain people were not there on that day, that his credibility may be attacked upon the ground of interlinking or interlocking financial interests, not only with the defendant or any defendant but with the wife of any defendant. Overruled.

M: Wegman: I take an exception. I should like to, if I may, direct your Honor's attention to the fact that the witness did not testify that those people were not there, that that conversation was not held.

Carl Shapiro—For Defts.—Cross

8935

He said he did not see them there and they were not there while he was there and he heard no such conversation.

The Court: Let it go that way.

Mr. Turkus: Let me get back to what I am doing here, if I may, your Honor.

Q. What did we get, \$10,000 a year to Betty Buchalter? A. In excess.

Q. In excess of \$10,000 a year? I know it may be hard to refresh your recollection about this but, in round numbers, in 1935, what did Betty Buchalter get out of the Raleigh?

8936

Mr. Wegman: May we have an objection to this line so that I do not have to get up with each question?

Mr. Turkus: Yes, your Honor, I wish you would grant it.

The Court: Yes, you may an objection.

Mr. Wegman: That is to this entire line of questioning, and my exception.

8937

A. In 1936?

Q. Yes. A. I would say that her share of the dividends in the Baltimore corporation were about ten to twelve thousand dollars.

Q. And in 1937? A. A similar amount.

Q. 1938? A. That was a bad year.

Q. All right, would it be somewhere around \$10,000? A. It was a lot less than \$10,000.

Q. 1938 was a bad year? Would you say \$7500. A. Yes, I would say \$7500. That was a bad year. '37 was the bad year. I am sorry.

Q. All right, 1937 what did she draw? A. About \$7500.

8938

Carl Shapiro—For Defts.—Cross

Q. 1939, that was a bad year too toward the end? A. No, 1939 was a good year.

Q. All right, how much? A. In excess of \$10,000.

Q. Would you say between ten and twelve thousand or between ten and fifteen? A. It might have even been more than twelve.

Q. It might have been fifteen? A. No, I don't think so.

8939

Q. 1940, what did she draw? A. More than fifteen thousand dollars.

Q. It would be pretty close to twenty, wouldn't it? A. That I could not say.

Q. In 1941, to date, what has she drawn? A. It has been a very good year.

Q. It would be more than twenty this year, wouldn't it? A. No, it won't be more than twenty. We don't know our figures. Our sales for the calendar year 1941 are three million dollars.

8940

Q. So on the basis of three million dollars worth of sales, what is the interest of 25 per cent worth by way of dividends? A. That is a very profitable business, I am happy to say.

Q. Well, as secretary and treasurer, and familiar with figures, give us a rough estimate? A. It would be around twenty thousand.

Q. That New York corporation, does that pay dividends? A. Yes.

Q. Does it pay it in the same proportion as the Baltimore corporation? A. Yes.

Q. In other words, would you say that the dividends in the New York corporation are about four times larger than the Baltimore corporation? A. No, would not be larger.

Q. How much larger? What is 25 per cent interest worth in the New York corporation? A. There is nobody that owns a 25 per cent.

Q. What does 25 per cent throw off? A. That is hardly a question I can answer because—

Q. What is the smallest, please? A. Mr. Turkus, please—

Q. In the New York corporation. A. Let me make this plain. We pay the Baltimore corporation a certain amount to make a unit, and if there is sufficient work there is larger profits.

8942

Q. I am not interested in the technique. A. Excuse me, please.

Q. All right. A. The New York corporation does the buying and does the selling, will sometimes have to take losses on merchandise that does not move and the governing of profits from the Baltimore corporation as to the New York corporation are not relevant.

Q. Well, are they interlinking directorates, the New York and Baltimore corporation? A. I happen to be the general manager of the Baltimore corporation as well as the New York corporation.

8943

Q. And you work for the New York corporation and you work for the Baltimore corporation? A. Yes, I direct both corporations.

Q. Are there any other interlocking officers or stockholders? A. No, excepting Mr. Borish and Mr. Sam Smith.

Q. Sam Smith is married to the sister of Jacob Shapiro and yourself? A. Yes, sir.

Q. So he is an interlocking director? A. Yes, he is. Mr. Borish is not related to us.

Q. This Betty Buchalter interest, isn't that the Lepke interest?

8944

Carl Shapiro—For Defts.—Cross

Mr. Wegman: I object to that, if your Honor pleases.

A. That is hardly fair. Mrs. Buchalter happens—

The Court: Overruled.

Q. Is it, yes or no? A. No, I cannot answer it.

8945

Q. Then don't answer it if you cannot answer it yes or no. I do not want the answer. If you cannot tell me whether that is the Lepke interest, yes or no, I do not want the answer. Can—

Mr. Wegman: I object to that question, argumentative, improper in form, and I submit to your Honor that since your Honor has permitted the inquiry to this point that the witness should be permitted to answer in his own way.

8946

The Court: Yes. I am puzzled as to how the witness could possibly know the private arrangements between husband and wife—

The Witness: Mr. Turkus—

Mr. Turkus: Don't volunteer.

The Court: —unless a defendant told him so.

Q. I just want to get this from the New York corporation. What are the dividends of the New York corporation? A. Well, the dividends of the New York corporation—

Q. Take this year. A. This year I hope that we will have more than \$20,000, \$30,000.

Q. And that will be split up, the twenty or

thirty thousand dollars; does that go to all the stockholders? A. Yes.

Q. All right. A. That would be an individual dividend.

Q. You mean twenty thousand dollars apiece or twenty thousand dollars for all? A. No, apiece.

Q. And how many stockholders are there in that one? A. Three stockholders, of course that is relative to the amount of stock that each individual has.

8948

Q. So the three stockholders get the \$90,000? A. No, there is the minority stockholder and then there is one who has a little more.

Q. I mean all the stockholders all together. A. It would not amount to \$90,000.

Q. How much? A. Possibly \$50,000.

Q. And this year you estimate that the Baltimore corporation, all the stockholders together will get about \$80,000? A. No. There are minority holders there too.

Q. You estimated \$20,000 for the 25 per cent interest and the other 75 per cent— A. But there are minority holders there who will not proportionately draw.

8949

Q. At least the total profits of the Baltimore end of the corporation this year will be at least \$80,000? A. No.

Q. How many thousand do you estimate? A. Oh, around sixty, something like that, fifty, or forty. I would not know.

Q. Between the two corporations, the profits will be around a hundred thousand or better for 1941? A. I think so.

Q. Now, having gotten yourself into a very

8950

Carl Shapiro—For Defts.—Cross

lucrative business starting January, 1936, didn't you devote much time down in Baltimore? A. Yes, about 50 per cent of my time.

Q. In 1936, what hotel did you stop at when you were in Baltimore? A. I stayed at my sister's place.

Q. What is the name of your sister? A. Laura Smith.

Q. And what was the address in 1936 where you stopped? A. 3716 Liberty Heights.

8951

Q. Is that a very fashionable section of Baltimore? A. Well, I would say it is a nice section.

Q. Where does Laura Smith live now? A. She lives on Springdale Avenue. I don't know the number.

Q. You don't stop there any more? A. Oh, sure.

Q. Don't you stop at any hotel? A. In Baltimore?

Q. Yes. A. There was no need for it.

8952

Q. You told Mr. Wegman that you had refreshed your recollection so that you could testify that you did not see Tannenbaum or Rubin on September 11, 1936, a Friday, because you had refreshed your recollection from certain papers of the Raleigh?

Mr. Wegman: I object—

A. That is hardly the facts.

Mr. Wegman: Mr. Shapiro, please, when I make an objection—

Q. Answer it yes or no.

Carl Shapiro—For Defts.—Cross

8953

Mr. Wegman: Mr. Turkus, I have a right to object before there is an answer. Now, please. If your Honor pleases, I object to the question. It is improper in form. It misstates the record. It misstates the testimony of the witness on direct.

The Witness: That is right.

The Court: Overruled.

Mr. Wegman: Exception.

8954

Q. Yes or no. A. That was not the question asked me by Mr. Wegman.

Q. It was not? A. No.

Q. Did you before you came to court refresh your recollection from certain records of the Raleigh? A. That I was in New York at that date?

Q. Yes, that you were in New York that day.
A. Positively.

Q. And those records—

The Court: Pardon me just a minute. On the Court's notes appears the following concerning your direct testimony: "Did not see Rubin or Tannenbaum there September 11th."

8955

The Witness: That is right.

By the Court:

Q. Did you so testify? A. Yes, sir.

Q. And did you testify that you know that because you refreshed your recollection by certain papers?

8956

Carl Shapiro—For Defts.—Cross

Mr. Wegman: No, that is not the testimony.

A. I know I was in New York that day because of certain records. That is what I said.

By Mr. Turkus:

Q. Were you asked this by Mr. Wegman, referring to page 2830 of the present record:

8957

"By Mr. Wegman:

"Q. Mr. Shapiro, did you see either Rubin or Tannenbaum at any time on Friday, September 11, 1936, at any place, at any other place? A. No, I did not. I don't believe I did. I am pretty sure of it."

Did you hear that? A. Yes, sir.

Q. Did you hear then Mr. Turkus say: "Will your Honor direct the witness to bring with him the records he used to refresh his recollection?" A. That is right.

8958

Q. Did you hear Mr. Wegman say: "I have those and I shall be glad to mark them for identification at this time. If you want them in evidence, you can see them. That is the rule. I will be glad to offer them in evidence. I now offer them in evidence."

Did you hear that discussion? A. Yes, sir.

Q. Now, the papers that you refreshed your recollection from were checks, weren't they? A. That is right.

Q. And from those checks, that is how you told that you were in New York on September 11th, Friday, 1936? A. Yes.

Carl Shapiro—For Defts.—Cross

8959

Q. May I see the checks? Perchance, do you have a diary? A. No.

Q. Why, a business that makes a hundred thousand a year profit, you have no diary?

Mr. Wegman: I object to that.

A. My secretary has a diary.

Q. An office diary? A. My secretary has a diary.

Q. Did you use the diary to refresh your recollection? A. No, these checks. 8960

Q. Just these checks, Defendants' Exhibit Z-9 for Identification? A. Can I show you?

Q. Yes, you look them over. A. I will be glad to show you.

(Mr. Turkus hands checks to witness.)

The Witness: Here is a check—

Q. Wait. I do not want you to volunteer anything. It is from those checks—

Mr. Wegman: If your Honor please—

8961

Mr. Turkus: Will you sit down and keep quiet, please, and stop getting so excited?

Mr. Wegman: I am not excited.

Mr. Turkus: I merely asked the witness if that bundle of checks, Exhibit Z-19, was used by him to refresh his recollection.

The Witness: Yes.

Mr. Turkus: Now, let me have them back.

8962

Carl Shapiro—For Defts.—Cross

Q. And you have already told us you did not look at the office diary to refresh your recollection? A. I have no office diary. My secretary has.

Q. You did not look at the diary that your secretary keeps? A. No, I didn't. I would not know where it is.

Q. You did not look at the office records to see if there were any stubs for trains going down to Baltimore that you may have used? A. I never keep those stubs.

8963

Q. Did you look at the office records? A. I could not say.

Q. What? A. I did not look at that, no.

Q. Who was the first person that spoke to you about coming into this case as a witness? A. I was called in by attorneys Wegman and Climenko.

Q. You did not go back to your office after the discussion in the office of Wegman and Climenko, to look for any record of stubs or any other railroad record to show the trips you took to Baltimore in 1936? A. That might have been an oversight on Wegman's part. If he had asked me to bring that, I would have looked for it.

8964

Q. I see. That never occurred to you? A. I just brought what Mr. Wegman asked me to bring.

Q. You knew you were just coming here to say that you did not see Rubin and Tannenbaum in the office on September 11, 1936, didn't you? A. Mr. Turkus, you asked me—

Q. Now answer that yes or no. Didn't you know that you were coming hereto testify that

on Friday, September 11, 1936, before Joe Rosen was killed in Brooklyn, you did not see Rubin and Tannenbaum up at 200 Fifth Avenue? Didn't you? A. I could not anticipate questions. I came here as a witness.

Q. You did not anticipate the direct questioning by Mr. Wegman? A. Mr. Wegman—

Q. Yes or no? A. That question?

Q. Yes. A. Any question I cannot anticipate.

Q. Did you not know that Mr. Wegman was going to ask you who was in the office of the Raleigh on Friday, September 11, 1936? A. That was some of the questions he asked me in his office.

8966

Q. But didn't you anticipate it? A. I don't know what he would ask me, Mr. Turkus.

Q. You don't know what Wegman and Climenko asked you in the law office when you were there as a prospective witness in the Lepke case?

Mr. Wegman: He did not say that.

A. I cannot be accountable for any questions that might be asked of me and I cannot answer them.

8967

Q. I am asking you that when you took this witness stand here yesterday as a witness for Lepke, whether you did not know you were going to be asked about your movements on September 11, 1936. A. No more than I would know what question you would ask me next.

Q. So that you came here completely surprised when you were asked about September 11th? A. No, sir.

8968

Carl Shapiro—For Defts.—Cross

Q. Why, you dug out the checks of September 11, 1936, to refresh your recollection, didn't you?

A. I brought all the checks dated as of September 11th, written in the New York office.

Q. 1936? A. 1936, as requested.

Q. Then you understood when you took this witness stand that September 11, 1936, had significance in this case, didn't you? A. That is right.

8969

Q. And you knew you were going to be here to testify about September 11th? A. As to the facts.

Q. 1936? A. Yes.

Q. And you knew you were to be here to testify that you did not see Tannenbaum or Rubin in that office? A. That is the truth.

Q. And you did not look for railroad stubs to see if you had been in Baltimore; you did not look in the secretary's diary; you only looked at Z-19, the checks? A. We don't keep railroad stubs; they are given to the conductor when they collect the—

8970

Q. When the tickets are purchased, isn't there a record of the ticket? A. They pick that up.

Q. What about a Pullman? Did you ever ride in a Pullman, with a \$100,000 profit? A. Sure I did.

Q. Did you ever hear of Pullman tickets? A. I do not ride the Pullman from Baltimore to New York.

Q. Oh, I see. And never did in all the trips you took down from 1936 to date, you never once rode the Pullman? A. Sleeper, yes, but not the Pullman.

Carl Shapiro—For Defts.—Redirect

8971

Q. You know there are sleeper records? A. When I didn't take the sleeper I went by coach.

Q. Other than these checks, Exhibit Z-9 for identification, did you refresh your recollection from anything under the sun? A. I was not asked to bring anything.

Q. Did you, sir? A. No, sir.

Mr. Turkus: I am through.

Redirect examination by Mr. Wegman:

8972

Q. Mr. Shapiro, referring first to the last thing that Mr. Turkus got so excited and vehement about, is it possible for you to tell from these checks that you were positively and certainly in New York on September 11th? A. Yes, sir.

Q. Is it necessary to refer to any other records when you have these checks to demonstrate the fact that you necessarily were in New York on that day? A. That is very conclusive.

Q. Now will you please tell his Honor and this jury, and inform Mr. Turkus for his edification, how you can tell from those checks you were in New York on that day without the necessity of looking at any other records? A. There is one check here marked "Payroll, September 11, 1936, for \$132." The only signature required is mine, Carl Shapiro. It is endorsed, "Carl Shapiro, O. K. for cash," and was cashed by Naomi Shapiro. That proves conclusively that I was there on that date.

8973

Q. It was cashed on that day; is that correct? A. It was cashed on that day. Here are other

8974

Carl Shapiro—For Defts.—Redirect

checks here that was written on the same day, by the same bookkeeper, and I signed every one of those checks.

Q. And some of those checks cleared the bank on September 11th? A. Yes. I don't know all, but some. One of them it has, here. Some of these were given to other parties.

The Court: May I see that payroll check?

8975

Mr. Turkus: Your Honor, will you reserve the question until I get one question on record?

The Court: I am not asking a question. I am going to ask a question in a minute. Go ahead, Counsel.

Mr. Turkus: I think I wanted to ask the same question.

The Court: Go ahead.

Mr. Wegman: I have been waiting for Mr. Turkus to get through.

The Court: You were standing up.

8976

Mr. Wegman: Yes, I am questioning the witness on redirect.

Mr. Turkus: Have you finished?

The Court: That is what I asked you.

Mr. Wegman: I am not through with my redirect. I am waiting for your Honor to get through.

The Court: I asked for this check because I wanted to see if it had been folded as though it had been put in an envelope and gone through the mail. I see a crease mark in the check.

By the Court:

Q. Did you sign that in Baltimore and mail it back to New York? A. No, your Honor. That check was written on the 11th and to send it from Baltimore would take at least a day to get to the New York office.

Q. You cannot account for that crease mark? A. Anybody would fold a check and put it in a pass book in making a deposit, and our bank account was in New York.

8978

Q. I am just asking you if that refreshes your recollection on that point. A. No; that check was written in New York and cashed in New York on the very same day.

Q. Did you ever mail checks from Baltimore to New York? A. Baltimore checks.

Q. When you were in Baltimore, did you always come back to New York on week-ends and sign payroll checks? A. Yes.

Q. They never mailed payroll checks to mail back to New York, to save you the trouble? A. I always spent my week-ends in New York, and we always paid on a Friday.

8979

By Mr. Wegman:

Q. You lived in New York at that time, didn't you, Mr. Shapiro?

Mr. Turkus: That has been brought out on direct.

Mr. Wegman: May I have the checks, please?

8980

Carl Shapiro—For Defts.—Redirect

Q. In answer to his Honor's question, you testified, Mr. Shapiro, that checks were sometimes mailed from Baltimore to New York; in response to that you said those were Baltimore checks. Will you please explain to his Honor and this jury the difference between New York checks and Baltimore checks? A. They are two different colors. The Baltimore check was an entirely different color than the New York check.

8981

Q. And the Baltimore checks, when you say Baltimore checks, you mean checks of the Baltimore company? A. No, even of the New York corporation. All checks written in Baltimore for the sake of easy identification as far as the bookkeepers' records are concerned, are a different color than New York checks of the same corporation. The Baltimore checks were white.

8982

The Court: We will continue at 1:30. Everybody kindly remain in order.

Gentlemen of the jury, please do not discuss the case, let nobody talk to you about it. Keep your minds open.

First the witness may leave.

Now the jury pass out the other door.

Now the defendants are remanded.

(Whereupon a recess was taken to 1:30 P. M.)

Carl Shapiro—For Defts.—Redirect

8983

(AFTERNOON SESSION. TRIAL RESUMED.)

CARL SHAPIRO, resumed the stand and further testified, as follows:

Mr. Wegman: Before I proceed questioning, I now renew the offer of these checks in evidence.

Mr. Turkus: Consented to.

(Ten checks received in evidence and marked as one exhibit, Defendants' Exhibit 7.)

8984

Re-direct examination by Mr. Wegman:

Q. Now, Mr. Shapiro, these checks came from a regular book of checks, didn't they? A. Yes, sir.

Q. And the checks in the book are numbered in rotation? A. Yes, sir.

Q. So the serial number on the checks shows their disposition in the book? A. Yes, sir.

8985

Mr. Wegman: If your Honor please, may I suspend questioning long enough to identify these checks to the jury. We have them in evidence.

The Court: Yes.

Mr. Wegman: These checks, a series of ten checks, all dated September 11, 1936, start with the serial number 584, and then continue, 585, 586, 587, 588, 589, 590, 591, 592 and 593. Checks numbered 588, 590, 592 and 591 have a bank perforation showing they cleared through the bank on

8986

Carl Shapiro—For Defts.—Redirect

September 11, 1936. The other checks bear various cancellation dates, and there are various payees named on the checks. Each check bears only the signature on it, "Carl Shapiro".

Q. Do you know in whose handwriting these checks are made out? A. Yes, sir, I know the writing of Naomi Shapiro.

8987

Q. Every one of them is in her handwriting? A. Yes, sir.

Q. In the Baltimore office of the business there were checks of the New York corporation? A. Yes, sir.

Q. Those checks that you testified to were of different color than the checks from New York? A. Yes, sir.

Q. And when the occasion arose for you to sign a check while you were in Baltimore on the New York account, that check was written in Baltimore and signed by you there on this other color? A. Yes, sir.

8988

Mr. Turkus: May we have the witness testify? That is leading.

Q. Were checks sent to you in Baltimore from New York for you to sign in Baltimore? A. No, sir.

Q. And the checks were signed by you on the dates the checks bear? A. Yes, sir.

Q. Now, when were you at my office the other day did I ask you substantially the same questions I asked you on your direct examination here?

Carl Shapiro—For Defts.—Redirect

8989

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection sustained.

Mr. Wegman: Exception.

Mr. Wegman: May I point out to your Honor that on cross-examination Mr. Turkus asked this witness whether he knew what he was going to testify to here, and I submit I have the right to elicit for the jury the fact he was asked the very questions he was asked here, and then what happened after that.

8990

The Court: You mean in your office?

Mr. Wegman: Yes, at my office.

The Court: Objection sustained.

Mr. Wegman: Exception.

Q. Did I ask you, Mr. Shapiro, to check your records to see whether there was any indication you were in New York on Friday, September 11th, which would satisfy you as to whether or not you were actually in New York on that date?

8991

Mr. Turkus: Objected to.

The Court: Objection sustained.

Mr. Wegman: Exception.

Q. When I completed my interrogation of you, did I then tell you I would want you to testify at this trial?

Mr. Turkus: Objected to.

The Court: Objection sustained.

Mr. Wegman: Exception.

8992

Carl Shapiro—For Defts.—Redirect

Q. Did I ask you to bring with you at this trial the lease of the number 200 Fifth Avenue office and the checks which showed you were in New York on that date?

Mr. Turkus: I object.

The Court: Objection sustained.

Mr. Wegmar: Exception.

8993

Q. And did I tell you I would ask you the same questions on the witness stand that I had asked you at my office?

Mr. Turkus: Objected to.

The Court: Objection sustained.

Mr. Wegman: Exception.

8994

Q. When you asked on examination by Mr. Turkus concerning anticipation of questions and you stated in response that you could not anticipate the question that might be asked, did you refer to the questions that were asked you or the questions that Mr. Turkus might ask you?

Mr. Turkus: Objected to.

The Court: Objection sustained.

Mr. Wegman: Exception.

Q. Well, Mr. Shapiro, you have been in direct charge and complete charge of the operation of the business of Raleigh Manufacturers, Incorporated, from 1936? A. Yes, sir.

Q. Since that time, since the late spring of 1937, did the defendant Buchalter, or your brother Jacob Shapiro, participate in any way, or have anything whatsoever to do with the operation of that business? A. Never did, no, sir.

Carl Shapiro—For Defts.—Redirect

8995

Q. In any way whatsoever? A. No, sir.

Q. And your business today is approximately three times as great as it was in 1936? A. Yes, sir.

The Court: Judge Talley has to absent himself from the room for a few moments.

Mr. Turkus: That will leave the defendant Weiss without counsel in the meantime.

8996

The Court: Will it be agreeable for Mr. Barshay to act in behalf of your client in the meanwhile?

Mr. Talley: Yes.

Defense Counsel: We have no objection.

The Court: It has come to the Court's attention that a situation, a critical illness on the part of one of defense counsel, makes it advisable for the Court to proceed no further this afternoon. His condition has gone to the extent of an ambulance and a priest, so for that reason it would be indecent to continue this afternoon, even though other counsel are present representing that defendant.

8997

The Court (addressing jury): Tomorrow is Thanksgiving Day. There will be no session. We will resume Friday morning at ten o'clock. Please do not discuss the case, nor let anybody talk to you about it. Keep your minds open. Follow all the other admonitions heretofore given. First, the witness may go. The

8998

Carl Shapiro—For Defts.—Redirect

witness will return on Friday morning at 10 o'clock. Now, the jury may leave.

(The jury retired from the courtroom.)

Put on the record that the illness has no relation to the trial, but to a chronic condition from which counsel has been suffering for a long period of time; it is purely dietary.

8999

The defendants are remanded.

(Adjournment was thereupon taken to Friday, November 21, 1941, at 10: a. m.)

Brooklyn, N. Y., November 21, 1941.

TRIAL RESUMED

9000

CARL SHAPIRO, a witness in behalf of the defense, resumed the stand and testified further as follows:

Mr. Barshay: In the absence of Mr. Wegman, I just want to ask one question, your Honor.

The Court: All right.

By Mr. Barshay:

Q. Mr. Shapiro, you spoke of the firm of Greenberg & Shapiro being in 936 Broadway. A. 935.

Colloquy

9001

The Court: Was not Mr. Wegman conducting the redirect?

Mr. Barshay: I said I don't want to wait for Mr. Wegman.

The Court: I think we had better wait.

Mr. Barshay: I have only one question.

The Court: It is a quarter past ten.

Mr. Barshay: It is up to your Honor. I thought I would save the Court's time.

The Court: I don't want a motion for a mistrial. 9002

Mr. Barshay: Can we withdraw this witness, and I will put a very short witness on?

The Court: I don't want a motion for a mistrial when Mr. Wegman comes in.

Mr. Talley: May I address the Court, please? I have a witness here, Major Kleinman, who is here from Camp and must get away. He must get away, he says, by 11 o'clock. He is a very short witness. I was going to interrupt the witness now and put Major Kleinman on so that he can get a plane to go South to his regiment. 9003

The Court: In order to avoid confusion, the Court is taking the defense of each defendant separately, and in the order in which the names appear on the indictment.

Mr. Talley: I do not know whether this is the last witness to be introduced at this time by defendant Buchalter's counsel. In any event, I am confronted with the

9004

Colloquy

situation of an Army officer, taken away from maneuvers down there, and I expected to call him on Wednesday afternoon and had him here. Now he has got to get back. He says he must be out of this building by 11 o'clock. I just present my dilemma to you.

The Court: If it is possible for him to come in the proper order, that is to your interest as well as all other defendants'.

9005

Mr. Talley: I appreciate it, but I am just confronted with that situation.

The Court: Where is Major Kleinman?

(Major William W. Kleinman approaches the rail.)

The Court: (to Major Kleinman) Come right up. We have not seen you in a long time. See if you can arrange your Army time.

9006

Major Kleinman: I have made reservation on a plane, your Honor, so as to return to Atlanta on the 12 o'clock. I had my leave extended by one day. The last plane I can make is one which leaves at noon today.

The Court: How long will this testimony be?

Mr. Talley: My direct examination will be no more than five minutes.

Mr. Turkus: I doubt if it will be that long, because it will be something concerning which Major Kleinman has no knowledge, that is, no personal knowledge.

The Court: That remains to be seen. All right, gentlemen of the jury, this is

Major William W. Kleinman—For Defts.—
Direct

9007

on the defense of Weiss. Of course, all evidence which is put in the case in defense of one defendant operates as a defense of all in so far as it applies to the others, but the present witness is withdrawn momentarily from the stand while Major Kleinman, a former attorney, testifies as a witness for the defendant Weiss.

9008

MAJOR WILLIAM W. KLEINMAN, Camp Wheeler, Georgia, called as a witness on behalf of the defendant Weiss and being first duly sworn, testified as follows:

Direct examination by Mr. Talley:

Q. Are you a Major in the United States Army at the present time? A. I am.

Q. And your regiment is located where at the present time? A. We are at Camp Wheeler, Georgia.

9009

Q. And you came up here in response to a request to testify in this trial, did you? A. I did.

Q. In the year 1940 were you practicing law here in the Borough of Brooklyn? A. I was.

Q. You have been a member of the Bar of the State of New York how many years? A. Since 1925.

Q. In the month of April, 1940, were you attorney for the defendant Emanuel Weiss? A. I was.

Q. And in that month do you remember tal-

9010

Major William W. Kleinman—For Defts.—
Direct

ing with Mr. Turkus, the Assistant District Attorney in charge of this prosecution? A. I do.

Q. And was it with reference to the defendant Weiss? A. It was.

Q. Was Weiss brought to the District Attorney's office at that time?

Mr. Turkus: Objected to. That is something he does not know of his own knowledge.

9011

The Court: Sustained.

Q. Did you have a talk with Mr. Turkus about Weiss at that time? A. Yes.

Q. Will you state what it was?

Mr. Turkus: That is objected to.

The Court: Sustained.

Mr. Talley: Exception.

Q. Did you see Mr. Weiss, the defendant Weiss, in the District Attorney's office at that time? A. I did not.

9012

Q. Was he here in the Borough of Brooklyn—
Weiss? A. I did not see him, Judge.

Q. Did you talk with him? A. Not until later that afternoon.

Q. Later that afternoon—but I am speaking now of the month of April—did you talk with Weiss in April? A. Yes.

Q. Of 1940? A. Yes, sir.

Q. And was it here in the Borough of Brooklyn? A. Yes, sir.

Q. What were the circumstances which brought about your meeting with Weiss at that time?

Major William W. Kleinman—For Defts.—
Direct

9013

Mr. Turkus: That is objected to.

The Court: Sustained as calling for a conclusion.

Q. Where did you see Weiss? A. In my office at 66—

Q. In the Borough of Brooklyn? A. 66 Court Street, Brooklyn, New York.

Q. Had he been brought to the District Attorney's office at that time?

9014

Mr. Turkus: That is something that the witness cannot testify to.

The Court: He can tell whether or not he saw him there.

Mr. Turkus: He says he did not see him there.

The Court: Sustained.

Q. Did you talk with Turkus about Weiss's being in the District Attorney's office?

9015

Mr. Turkus: That is objected to.

The Court: Sustained.

Mr. Talley: Exception.

Q. Do you remember when in the month of April it was that you talked with Mr. Turkus?

A. In the latter part of the month of April. I cannot recall the exact date.

Q. Would you say on or about April 25th?

A. I cannot say definitely as to any date.

Mr. Talley: Is it conceded by Mr. Turkus that on April 25th this witness had a talk with him, Mr. Turkus?

9016

*Major William W. Kleinman—For Defts.—
Direct*

Mr. Turkus: The Court has ruled that out.

Mr. Talley: I am asking if you will make that concession as to the date, that is all.

Mr. Turkus: Yes, I can tell the date. Let me have the file.

I have a date noted in my file. I want to check it to be accurate. The date that I have now in my file is 3/28/40. That would make it March 28, 1940, but I am going to check that with the office records.

This testimony is incompetent anyway, and immaterial at this time, and it is taken out of order. I think it disrupts the defense.

Q. Did you see Weiss at or about that time, March or April, 1940? A. Yes, sir.

Q. Where did you see him? A. In my office at 66 Court Street, Brooklyn.

9018 Q. Did you advise Mr. Turkus that you would produce him at any time that he was wanted?

Mr. Turkus: That is objected to.

The Court: Sustained.

Mr. Talley: Exception. If your Honor please, I promise to connect this testimony with other direct evidence, if you will allow me to put it in subject to connection. I certainly have not brought this Major Kleinman up from Georgia without a very definite purpose, and I ask you to let me put in this evidence, which is very brief, wholly within the knowledge of Mr. Turkus, and I promise to connect it.

*Major William W. Kleinman—For Defts.—
Direct*

9019

The Court: The trouble is that my own experience in the practice of law causes me to sense what the connection would be and that it is incompetent and it may be improper to get it before the jury for that reason. I cannot let you do that.

Mr. Talley: You have taken evidence, you will recall, subject to connection here in this case.

The Court: No.

9020

Mr. Talley: Your Honor should know I would not trifle with the Court and make a statement of that kind unless I knew I could carry it out, and it is of very vital importance to this case, this particular evidence.

The Court: I cannot let you do it.

Mr. Talley: You will not permit it?

The Court: That is a ruling.

Q. Were you, at a later date, that is, a few days after the date upon which I have been inquiring when you saw the defendant Weiss, were you present with him in a restaurant here in the Borough of Brooklyn?

9021

Mr. Turkus: We'd better fix the date that he speaks of.

The Court: Overruled.

Mr. Talley: I asked you to fix it, if you could.

Q. You say the latter part of April, according to your best recollection? A. It was either the latter part of April or the beginning of May.

9022

*Major William W. Kleinman—For Defts.—
Direct*

Q. At or about that time, after the interview you say you had with the defendant Weiss in your office, were you in a restaurant with defendant Weiss? A. I was.

Q. And were you and he seated at a table? A. We were. There was one other with us.

9023

Q. At that time were there any police officers in that restaurant that you saw, that were known to you? A. There were two who were known to me, one other who was a policeman by introduction, who was unknown to me.

Q. Who were the two that were known to you? A. There was Commissioner Valentine was the one whom I knew definitely. The other gentleman I knew by sight, but I cannot recall his name. He was either Deputy Chief Inspector or one of the Inspectors of the Police Department. The other gentleman to whom Commissioner Valentine introduced me was also either an Inspector or Deputy Chief Inspector, and, if I am not mistaken, there was one civilian, one other gentleman, with Commissioner Valentine's party who was not a police officer.

9024

Q. How near were they to the table at which you and Weiss sat? A. Oh, perhaps within 10 feet or 12 feet.

Q. Have you any knowledge of the fact that they saw Weiss with you that day and knew it was Weiss?

Mr. Turkus: Your Honor, there is an objection.

The Court: I do not understand the question.

(Pending question read.)

The Court: Sustained.

*Major William W. Kleinman—For Defts.—
Direct*

9025

Q. Were they at any time at your table, or was Weiss at the table they were at? A. No, at no time.

Q. Was there any conversation between you and them? A. Yes, sir.

Q. With respect to—Weiss? A. No, sir.

Q. Did Weiss take part in the conversation at all? A. No, sir.

Q. And when you say they were seated 10 feet away from your table, would you indicate from where you sit. Major, to whatever jurymen would indicate the distance? A. The room in which we were seated—it was the newer part of Peter Luger's Restaurant—is a rather square room. We were sitting about in the center, that is, Weiss, a lawyer—who was my assistant at that time, Mortimer Saffer, and I were in the center of this square room. Police Commissioner Valentine and his party were along the side of the room. I have estimated it to be about 10 or 12 feet away, from about where I am to the gentleman, the alternate juror.

9026

The Court: Broadway at Driggs Avenue?

The Witness: Yes, sir.

9027

A. (continued) And there were perhaps only three or four other people in that portion of the restaurant at the time, and the Police Commissioner and his party entered after we had been eating for some time. I think I have answered your question.

Q. Major, did you say anything to any of these policemen about Weiss being in your company?

A. No, I did not mention Weiss. When I saw

9028

*Major William W. Kleinman—For Defts.—
Direct*

Commissioner Valentine and his party come in, I mentioned that fact to Weiss and I then arose from my table and walked over and shook hands and spoke to Commissioner Valentine. I don't recall the conversation. It had nothing to do with Weiss.

Q. Is it your recollection that you and Weiss were not in the District Attorney's office together at any time during that period? A. I am rather certain that it was not Weiss whom I saw in the District Attorney's office. Weiss came to me after I went to the District Attorney's office for him.

Q. When you went to the District Attorney's office for him, did you have a talk with Mr. Turkus? A. Yes, sir.

Q. Was Mr. Weiss in the District Attorney's office at that time or not? A. I could not see.

Q. Was he in custody at that time, do you know? A. I am only assuming, Judge.

9030

Mr. Turkus: I object.

The Court: Sustained.

Mr. Talley: Exception.

Q. After you talked with Mr. Turkus, Weiss was not in custody, was he?

Mr. Turkus: Just a minute. There is an objection.

The Court: Sustained.

Mr. Talley: Exception. This witness was his attorney.

Q. How long after the day that you communicated with Mr. Turkus about Weiss were you

*Major William W. Kleinman—For Defts.—
Direct*

9031

in the restaurant with him? A. Well, my best estimate of the time would be within a few weeks.

Q. How long after the day that you went to the District Attorney's office and talked with Mr. Turkus about Weiss, how long after that day was it that Weiss was in your office? A. I cannot recall definitely the time. He was in my office quite frequently after that day, and I should imagine for at least a few weeks after that.

9032

Q. But you know of your own knowledge, as his attorney and from observing him, that he was not then in the custody of the District Attorney or anybody else? A. He was with me.

Q. Free to come and go? A. Apparently.

Q. Did you write a letter to the District Attorney's office, Major, in connection with the Weiss matter at that time? A. I don't believe it was in connection with Weiss that I wrote the letter. I spoke to Mr. Turkus in connection with Weiss personally.

Q. Did you, in a letter, advise the District Attorney, that you would produce Weiss whenever he was wanted? A. I cannot say definitely. I have asked Mr. Price, who was then my associate, to find out if there was such a letter. I have not been able to determine.

9033

Q. But you do know that you made that offer orally to Mr. Turkus? A. Yes.

Q. Was that made to Mr. Turkus in his office?

Mr. Turkus: I cannot understand Judge Talley's attitude. Three times the conversation has been ruled out, and now Judge Talley is testifying to the conversation.

9034

*Major William W. Kleinman—For Defts.—
Cross*

The Court: What is it?

Mr. Turkus: It is an objection, of course.

The Court: Sustained.

Mr. Talley: Exception.

By the Court:

9035

Q. Major, some lawyers keep an office register for use in making up their bills, and it contains the amount of work done from day to day, in diary form. A. Yes, sir.

Q. The register stating what clients called, how long they talked, and what they talked about. Did you ever keep an office register? A. No, nothing like that, sir.

Q. Did you ever keep a callers' book? A. Just telephone calls, sir.

Q. You don't keep a callers' book to show when people came into your office? A. Sometimes that has happened, but we don't keep it as an office routine.

9036

Q. Did you have such a book? A. No, sir.

Mr. Talley: I wish to take a general exception to your Honor's refusal to allow me to present this evidence through this witness, subject to my offer to connect it. I except to your Honor's attitude and ruling in that matter. I have no further questions of this witness.

Cross-examination by Mr. Turkus:

Q. Major Kleinman, you at one time were Assistant District Attorney in Brooklyn? A. I was.

Major William W. Kleinman—For Defts.—
Cross

9037

Q. Judge Taylor asked you whether you had any office register. I suggest to you the date of 3/28/40 to refresh your recollection as to the date when Weiss was in your office. Does that help you any? A. If you have any means of believing that that is the date that I spoke to you, I will accept your suggestion.

Q. That is the notation in my file. A. I have no recollection.

Q. That would make it March 28th. A. I have no other recollection of it except that I attempt to fix it by the time or around the time we were moving our office from one floor to the other.

9038

Q. At any rate, the date that Weiss was in your office was the date that you had the conversation with Assistant District Attorney Turkus; is that correct? A. That is correct.

Q. You had the conversation with Turkus earlier in that day, and later in the day you saw Weiss? A. That is correct.

Q. And within how many weeks after that was that restaurant incident that you met Weiss? A. I cannot say. I have testified that I thought it was about two or three weeks, but my recollection is very hazy about that.

9039

Q. At any rate, since that restaurant incident you have not seen Weiss again until you saw him in court? A. No, I saw him after that, but I cannot say for how long after that. I know that that was not the very last time I saw him.

Q. It was a very short time after that that was the last time? A. Not long after that.

Q. And the next time you saw him after that last occasion was when you saw him in court? A. Today.

9040 *Carl Shapiro—Recalled for Defts.—Redirect*

Redirect examination by Mr. Talley:

Q. When did you go out with your regiment, Major? A. I left Brooklyn around January 28, 1941.

Mr. Talley: I have no further questions, Major. Thank you very much.

The Court: Major Kleinman says he can come back any time next week, if notified.

9041

Mr. Talley: Thank you.

The Court: Defense of defendant Buchalter resumed.

CARL SHAPIRO, a witness in behalf of the defense, resumes the stand and testifies further as follows:

By Mr. Wegman:

9042

Q. Mr. Shapiro, when Mr. Turkus was questioning you about the assets of Greenberg and Shapiro, 935 Broadway, he asked you about an entrance to that building on Fifth Avenue. You did not recall the number on Fifth Avenue. Was that the same building as 200 Fifth Avenue? A. No, it is not.

Q. It is several blocks away from 200 Fifth Avenue? A. Yes, it is two blocks away.

Q. And on the other side of Fifth Avenue? A. It has a freight entrance on Fifth Avenue.

Q. The main entrance to the building is on Broadway? A. 935.

Carl Shapiro—Recalled for Defts.—Redirect

9043

Q. There is no connection between that building and the building at 200 Fifth Avenue? A. None whatsoever.

Q. The business that was located at 935 Broadway was the business of Greenberg & Shapiro, is that correct? A. Yes, sir.

Q. Did the defendant Buchalter have any interest in that business? A. None whatsoever.

Q. I asked you on your direct examination about whether you saw certain individuals at the office at 200 Fifth Avenue in the month of September, 1936. I shall now extend that time. I ask you to tell his Honor and this jury whether any of those individuals ever came to the office in 200 Fifth Avenue at any time during the year 1936.

9044

Mr. Turkus: What individuals does he mean?

Mr. Wegman: Do you want me to specify them?

Mr. Turkus: Yes, certainly.

Mr. Wegman: I said the ones that I asked him about on direct examination, Tannenbaum and Rubin.

9045

A. I don't believe they ever came up there.

Q. And during the entire year of 1936—

Mr. Turkus: The answer is, "I don't believe." That is an improper answer to the question.

The Court: What do you want to do?

Mr. Turkus: Strike it out.

The Court: Make a motion.

Mr. Turkus: I do.

9046

Carl Shapiro—Recalled for Defts.—Recross

The Court: Strike it out.

Mr. Wegman: I don't take any exception to that striking out, if your Honor pleases. I shall now reframe the question.

Q. Did you ever see Tannenbaum or Rubin at the office of 200 Fifth Avenue during the year 1936? A. No, I did not.

9047

Q. During that year did you frequently, almost daily, as a matter of fact, see police officers come into that office and in the hall outside that office? A. Yes.

Mr. Wegman: That is all.

Recross examination by Mr. Turkus:

Q. During your examination you testified that the 25 per cent interest in that Baltimore corporation was Carl Shapiro, Anna Shapiro, Betty Buchalter, and Nathan Borish; is that correct?

9048

Mr. Climenko: If your Honor please, we object to this as improper recross-examination.

Mr. Turkus: I want to get one interest straightened out that has not been—

The Court: Discretionary. Overruled.
Mr. Climenko: Exception.

Q. You did not testify to that? A. Nathan Borish has a 25 per cent interest in the Baltimore corporation; Betty Buchalter has 25 per cent interest in the Baltimore corporation; Samuel Smith has a 12½ per cent interest in the Baltimore corporation, and Carl Shapiro has a 12½

Carl Shapiro—Recalled for Defts.—Recross

9049

per cent interest in the Baltimore corporation, that is on stock distributed—

Q. That is 75 per cent. Who has got the other 25? A. That is—

Mr. Wegman: May we have the answer repeated, if your Honor pleases.

The Witness: Let me explain that this way:—

Q. We have a question now. Where is the other 25? A. There is 100 per cent of the stock distributed amongst these five individuals.

9050

Q. Who are the five? A. Anna Shapiro.

Q. You did not give me her interest? A. 25 per cent.

Q. That is what I said. Who is Anna Shapiro? A. My brother's wife.

Q. You mean Gurrah's wife? A. Jacob Shapiro's wife.

Q. So that Lepke's wife has a 25 per cent interest and Gurrah's wife has a 25 per cent interest? A. That is right.

9051

Q. And Gurrah's wife will get about \$20,000 this year as her interest?

Mr. Climenko: If your Honor pleases, that is objected to on the ground it is improper recross-examination and on the further ground that the matter is immaterial to the issues here.

The Court: Overruled.

Mr. Climenko: Exception.

A. I approximated that amount at that time.

9052

Carl Shapiro—Recalled for Defts.—Recross

Q. At any rate, let me ask you this: She will get the same as Betty Buchalter? A. That is right.

Q. And she did get the same as Betty Buchalter since the formation of the Raleigh?

A. They have equal shares.

Q. When is pay day in Baltimore? A. Friday.

Mr. Turkus: May I have those checks, Defendants' Exhibits?

9053

Q. Your payroll down in Baltimore is for about seven hundred employees, isn't it? A. That is right.

Q. Your payroll in Baltimore amounts to approximately how much per week? A. That varies. I would say our expenses in Baltimore are about \$25,000 a week.

Q. And the greater share of it is disbursed on Friday? A. Yes.

Q. Up in New York you disbursed \$132.50 payroll in September, 1936, isn't that right? A. If that is what the check calls for.

9054

Q. Take a look at it, Defendants' Exhibit 7, payroll. A. That is weekly payroll of the New York office.

Q. The payroll down in Baltimore to the employees, that is cash, isn't it? A. Yes.

Q. And you are the one that signs the checks? A. I sign all checks but there is just one check made out for payroll there.

Q. Yes, and that is a substantial check? A. That is right.

Q. Approximately \$25,000? A. Not at that time, no.

Carl Shapiro—Recalled for Defts.—Recross

9055

Q. Well, at that time approximately how much? A. I would say about a little less than half.

Q. About \$12,000 then? A. I cannot put a figure on it but it was a lot less than \$25,000.

Q. Well, about fifty per cent of what it is today? A. No. Less than fifty per cent.

Q. Approximately? A. About \$9,000, \$8,000.

Q. In all the experience that you have had with the Raleigh, did you ever sign a post-dated check in your New York office? A. I don't believe I ever did.

9056

Q. Well, do you mean that since the formation of the Raleigh you never signed checks in anticipation of going out of town? A. Not in the New York office, no.

Q. Did you in the Baltimore office? A. Yes, sir, not post-dated.

Q. I assume then— A. Not post-dated.

Q. Not post-dated? A. No, sir.

Q. I don't mean from the standpoint of not having funds and desiring to anticipate the check; I mean in anticipation of being elsewhere?

A. In the Baltimore corporation if I had—

9057

Q. Yes or no, that is all it calls for. A. Let me hear that question again, please?

(Question read.)

A. I signed blank checks, yes.

Q. Didn't you ever sign blank checks in the New York office? A. No, sir.

Q. Was it a blank check for the \$9,000 payroll that you signed down in Baltimore? A. That is right.

9058

Carl Shapiro—Recalled for Defts.—Recross

Q. Well, is it your testimony then that you signed the \$9,000 blank check and did not sign the \$132.50 blank check up in New York for the payroll here?

Mr. Wegman: Objected to, highly objectionable, argumentative.

The Court: Overruled.

9059

Mr. Wegman: Exception. May I call your Honor's attention to the form of that question specifically?

The Court: You don't have to.

Mr. Wegman: Exception.

Q. Just yes or no, sir.

Mr. Wegman: Now, if your Honor pleases, I submit that question cannot be answered yes or no and the witness is entitled to answer it fully.

The Court: He can answer it yes or no.

9060

Mr. Wegman: Exception.

A. Not very well, Mr. Turkus.

Q. What? A. I cannot answer that yes or no because—

The Court: The lawyer has been telling you.

Mr. Wegman: I take exception to that remark.

The Court: Read the question again.
(Question read.)

Mr. Wegman: I submit to your Honor that that question cannot be answered—

Carl Shapiro—Recalled for Defts.—Recross

9061

The Court: You have already submitted. This is another interruption. Sit down. There will be no more rulings on it. (To reporter) Read it again.

(Question read.)

A. It is quite customary to sign blank checks in Baitimore—

Q. Yes or no. A. I cannot answer it yes or no.

Q. Then don't bother with it. This other exhibit here, Defendants' Exhibit 7 in evidence, Carl Shapiro, that is the check you made out to yourself, isn't it? A. I did not make out this check but this check is made out to me.

9062

Q. You signed it? A. That is right.

Q. You signed it with all the other checks that you spoke of— A. That is right.

Q. —to Mr. Wegman? A. That is right, but not a blank check.

Q. No, that was not a blank check when you signed it? A. No, sir.

Q. Who is the lawyer for the Raleigh Clothing? A. We have about three lawyers.

9063

Q. I mean, do you see any of the lawyers for the Raleigh in the court-room?

Mr. Wegman: I made it clear on the record that the firm of Wegman & Climenko are the attorneys for Raleigh Manufacturers, Inc., and have been for some time.

The Court: Would you mind sitting down and letting the witness answer the question?

9064

Carl Shapiro—Recalled for Defts.—Redirect

Q. Now that Mr. Wegman, who examined you on direct examination, has made that statement for the record, which is the first intimation that he was counsel on the record—

Mr. Wegman: I object to that, if your Honor please.

9065

Q. How long has he been the lawyer for the Raleigh? A. Wegman & Climenko have been on retainer basis with us since the beginning of this year, 1941.

Q. And prior thereto? A. There is a lawyer who still is—

Q. I am talking about Wegman & Climenko. A. They were not our lawyers on a retainer basis.

Redirect examination by Mr. Wegman:

9066

Q. Mr. Shapiro, I call your attention to check No. 592, serial number 592, a part of Defendants' Exhibit 7, made out to the order of "Payroll," and call your attention to the reverse side of that check. I ask you whether that indicates to you one way or another whether you were in New York on the day that that check was cashed?

Mr. Turkus: That has been gone over on direct and redirect.

The Court: Not specifically at that point. Overruled.

A. This check bears my endorsement "Carl Shapiro" and to insure cashing it on that day it

Carl Shapiro—Recalled for Defts.—Recross

9067

has "O.K. for cash" and has been cashed by Naomi Shapiro on that very same day.

Q. That day is September 11, 1936? A. That day is September 11, 1936, and that positively assures me that I have been in New York on that day.

By the Court:

Q. It has been cashed by whom? A. By the bookkeeper, Naomi Shapiro.

9068

Mr. Turkus: That does not positively assure anything.

Q. Naomi (spelling) N-a-o-m-i? A. Yes.

By Mr. Wegman:

Q. The Naomi Shapiro you testified is now dead? A. She is dead, yes.

Mr. Wegman: That is all.

9069

Recross-examination by Mr. Turkus:

Q. You say that this check 592, the payroll, for \$132.50, because it has "Carl Shapiro, O.K. for cash" on it positively assures you that you were in New York on September 11, 1936? A. Absolutely.

Q. Why, couldn't you have signed it, September 11, 1936, payroll check, on the first day of September if you wanted to? A. Mr. Turkus—

Q. Yes or no, couldn't you?

9070

Carl Shapiro—Recalled for Defts.—Recross

Mr. Wegman: The question was "Why", if your Honor pleases. I submit the witness has a right to answer more than yes or no when the question asked for "Why".

The Court: Again you are getting the witness to balk at an answer. You interrupted before and told the man he could not answer yes or no.

Mr. Wegman: I submit that the question could not be—

9071

The Court: Will you keep still until the Judge is through? Sit down in your seat. I will tell you when you can get up.

Mr. Wegman: All right, I shall wait for your Honor's permission to arise.

The Court: When a question was asked which plainly admitted of a yes or no answer, you got up with an interruption which instructed the witness. The witness then would not answer yes or no and the purpose of the question was balked. Now you are doing the same thing again. Now you come to order. Take your exception and go ahead.

9072

Mr. Wegman: May I arise now, your Honor?

The Court: This called for a yes or no answer.

Mr. Wegman: May I arise now, your Honor?

The Court: Yes.

Mr. Wegman: And put an exception on the record and tell your Honor that the question I objected to before asked him

Carl Shapiro—Recalled for Defts.—Recross

9073

about a \$132 blank check and I submit again—

The Court: Don't argue about it.

Mr. Wegman: —that assumed a state of facts not in the record and could not be answered yes or no.

The Court: Now you sit down again.

Mr. Wegman: Exception.

The Court: This question will be asked and will be answered yes or no.

Mr. Wegman: I take an exception to that direction.

9074

(Pending question read).

A. I have never done that.

Q. All of these checks, September 11, 1936, Friday, aggregate substantially under \$500, don't they?

The Court: Just a minute. (To reporter) Will you read that question again?

(Question beginning, "Why, couldn't you have signed it—" read).

9075

The Court: "Why", comma after "Why." That was a preliminary and disjointed word the same as if the counsel had used the word "Well". The Court noted the manner in which the question was asked.

Mr. Wegman: May I take an exception to the Court's editorial comment?

The Court: Yes.

Mr. Wegman: And editorializing of the record.

The Court: I know just exactly what you are up to.

9076

Carl Shapiro—Recalled for Defts.—Recross

Mr. Wegman: May I take exception to that remark?

The Court: Yes, take a hundred. Proceed. The question as asked, and asked in the manner in which the diction is understood by the Court and by anybody else in the court-room who heard it, and whether counsel for the defense concedes it or not, called for a yes or no answer. Now sit down and behave yourself.

9077

Mr. Wegman: I take an exception.

Q. Couldn't you have signed Exhibit 7, the 592 numbered check for \$132.50, representing the payroll, in New York, on September 11th? Yes or no. A. Not in this case, no.

Q. Not in this case? A. Or any other case.

Q. This September 11, 1936, \$9,000 payroll check in Baltimore, you signed that some day other than September 11, 1936, didn't you? Yes or no. A. There is fifty checks signed at this time in Baltimore for checks to be issued daily.

9078

Q. Will you, sir, answer questions yes or no without making a speech? A. I cannot see where I can answer the question that way.

Q. If you cannot see it, tell me that.

The Court: Mr. Witness, you can answer that yes or no and you are instructed to do so.

Mr. Wegman: I except.

A. I could, yes.

The Court: Please answer it yes or no

Carl Shapiro—Recalled for Defts.—Recross

9079

Mr. Wegman: May I have my exception on the record, please?

The Court: Yes.

Q. Your answer is that you did sign the \$9,000 September 11, 1936, payroll check in Baltimore some day other than September 11, 1936, is that right? A. Yes.

Q. And you signed it, then, sometime prior to September 11, 1936? A. Yes.

Q. So that you signed it in anticipation of the \$9,000 payroll in Baltimore? A. That check could have been distributed for any reason.

9080

Q. Not what it could have been. Yes or no? A. In this case, yes. In this instance, yes.

Q. So that, sometime earlier than September 11, 1936, you signed a \$9,000 payroll check to be cashed and distributed in Baltimore; isn't that right? A. Yes.

Q. And on the back of that check you had to write, "O. K. for cash", didn't you? A. No, sir.

Q. Where is that check? A. I will get it for you any time you want it.

9081

Q. I know, but on Wednesday you told me you were going to bring me books. Are they here?

Mr. Wegman: I object to that, if your Honor pleases. There was no request that the books be brought here today.

The Court: Sustained.

Mr. Turkus: Yes, there was. There was an invitation that he bring them.

Mr. Wegman: Not for today. A couple of trucks to bring books up here. For what purpose?

9084

Carl Shapiro—Recalled for Defts.—Recross

Q. When did you extend the invitation to bring the books? A. At your request, if you wanted them, and if you still want them I will give them to you.

Q. But since Wednesday you brought nothing else but these ten checks? A. Our Baltimore office was closed. It was Thanksgiving Day. Any time you want these checks you can have them.

9084

Q. I mean the New York records or books, you brought nothing except these checks that were received in evidence on Wednesday? A. I was not asked to bring anything else.

Q. What other checks were signed down in Baltimore dated September 11, 1936, that were signed on some other date? A. There might be a few. I would not know that until I checked my records.

Q. Have you any idea approximately how much the face value was of the checks that you signed in Baltimore as of September 11, 1936 on some other date? A. Not the remotest.

9034

Q. So that never since the Raleigh has been in existence have you on a Friday been down at Baltimore when the \$9,000 payroll in 1936, and now aggregating \$25,000 in 1941, was distributed?

Mr. Wegman: I object to that.

A. That is a question I can hardly answer.

Mr. Wegman: Mr. Shapiro, please, when I am objecting, wait until I get my objection stated.

The Witness: I am sorry.

Carl Shapiro—Recalled for Defts.—Recross

9085

Mr. Wegman: I object to the question on the ground first, that it is argumentative; second, it assumes a state of facts not in evidence.

The Court: It is argumentative.

Mr. Wegman: And contrary to the evidence.

The Court: But he has answered it.

Q. Can you recall any Friday since the Raleigh went into existence when you were down at Baltimore tending to the Raleigh's business?
A. I could not say.

9086

Q. Were you down any Friday since 1935 to date? A. It is possible. Today I live in Baltimore, now.

Q. What? A. I live in Baltimore now, but that thing has been changed.

Q. Wait. When did you move to Baltimore as a permanent address? A. On Armistice Day in 1936, November 11th.

Q. That was November 11, 1936? A. I moved to Baltimore.

Q. And you have been living there ever since?
A. That is right.

9087

Q. And you do not know a single Friday that you were in Baltimore at the Raleigh plant or its office? A. When I moved to Baltimore—

Q. Do you? Answer that yes or no. A single instance? A. Mr. Turkus, will you permit me to let me answer you in a—

Q. I want you to answer yes or no when it is susceptible of yes or no. A. I am sorry, I cannot answer yes or no to that.

Q. But you can answer "yes" that upon the

9088

Carl Shapiro—Recalled for Defts.—Redirect

basis of the payroll check, No. 592 for \$132.50, because it is your signature, because you marked it "O. K. for cash," and it cleared the bank on September 11th, that tells you that you were here in New York September 11, 1936? A. Positively.

Redirect examination by Mr. Wegman:

9089

Q. Mr. Shapiro, will you please explain to the jury and to his Honor the custom that prevailed prior to November 11, 1936, and the custom which prevailed after November 11, 1936?

Mr. Turkus: I object to it on two grounds. First, it has been covered, and, second, he says he recalls this specifically because of that exhibit. No more custom now.

The Court: Sustained.

9090

Mr. Wegman: I respectfully except. I direct your Honor's attention to the fact that this is matter gone over by Mr. Turkus just immediately before I arose to take the witness on redirect. I submit that I have a right to have that custom explained, as it depends upon this question of where he was on a particular Friday or on any Friday, and the custom that pertains with respect to the signing of checks. That was all matter brought out for the very first time in this case on the cross-examination of Mr. Turkus which immediately preceded my arising at this time. We objected to it on the ground it was improper recross because it did not relate to matter previously testified

Carl Shapiro—Recalled for Defts.—Redirect

9091

to. I submit that I have a right to clear the record on that point. The record is now not clear.

The Court: The Court in its discretion did not allow it in as recross, but as a resumption of original cross. That is discretionary, but the question of custom was not brought up. That is why the Court deems it to be incompetent. The witness's answers have been specific as to recollection.

9092

Mr. Wegman: I respectfully except. I submit that the custom followed by this witness has a direct bearing on recollection and on practice. Mr. Turkus asked him—

The Court: To cut this short, let him state the custom. Now you have it.

By the Court:

Q. What was the custom? A. At the time I lived in New York I always spent my week-ends home, and for that reason I knew I was in the New York office. Today the situation is reversed. As of the time that I moved to Baltimore and I always continued to spend my week-end with my family, and at that time, from then on, it was in Baltimore.

9093

Q. Fly or take the train? A. Train from Baltimore to New York.

Q. Train time how long? A. Three hours, three hours and fifteen minutes, three and a half hours.

By Mr. Wegman:

Q. Now, Mr. Shapiro, are you the only one

9094 *Carl Shapiro—Recalled for Defts.—Redirect*

that signs checks in the Baltimore office? A. I am the only one that does, but someone else has a right to sign checks, too. That is Mr. Borish.

Q. In the Baltimore office check books were maintained covering both the New York account and the Baltimore account; is that correct? A. Yes, sir, that is why those numbers are changed.

Q. And in the New York office there were checks on the New York account? A. Yes, just a few, though.

9095 Q. And the checks in the New York office had a different color from the Baltimore checks; is that correct? A. That is right.

Q. So that by picking up a check and looking at it, you can tell whether the check was written in New York or was written in Baltimore?

Mr. Turkus: Just a minute. I object to that.

The Court: We have been all over that. Sustained.

9096 A. Your Honor, I can clearly bring this out. I have here checks from Baltimore and from New York, and they are different colors at this very instant. These are the colors of this very day, which signifies the different check-books in the office.

The Court: Show them to the lawyer.

Mr. Turkus: May it be noted on the record that they were produced out of a wallet by the witness?

Mr. Wegman: I ask that these be marked for identification.

Carl Shapiro—Recalled for Defts.—Redirect

9097

Mr. Turkus: I ask that they be marked in evidence.

Mr. Wegman: Very gladly—as separate exhibits, please. Suppose we take one of each.

Mr. Turkus: No, let us take them just as they were produced.

(Two green checks received and marked Defendants' Exhibit 8 in evidence. Two pink checks received and marked Defendants' Exhibit 9 in evidence.)

9098

Q. Mr. Shapiro, these checks marked Defendants' Exhibit 8 and Defendants' Exhibit 9 are checks of what corporation? A. The New York corporation.

Q. Will you please tell us which of the two, Defendants' Exhibit 8 or Defendants' Exhibit 9, are the checks written in the New York office, and which are the checks written in the Baltimore office? A. These checks today are in the New York office.

Q. What is the exhibit number on that? A. Exhibit 9.

9099

Q. Those are checks that are written in the New York office? A. That is right.

Q. And the others? A. These are today in the Baltimore corporation, in the Baltimore office of the New York corporation. That is Exhibit 8.

Q. Let me get that clear. I am afraid that your answer was not entirely clear. Exhibit 8 are checks— A. Of the New York corporation, that is kept in Baltimore.

9100

Carl Shapiro—Recalled for Defts.—Redirect

Q. So that if you have to sign checks of the New York corporation in Baltimore while you are in Baltimore, you sign them on— A. Exhibit 8.

Q. That is the green color? A. That is right.

Q. And if you are in New York and you sign a check of the New York corporation, that would be Exhibit 9, that is, this pink color? A. That is right.

9101

Q. And in 1936 was there a difference in the colors? A. Yes, there was.

Q. They were not, however, the same colors? A. They were not the same colors, but I am bringing that out as a distinction of the different checks.

Q. So that if, while you were in Baltimore, you had occasion to sign a check of the New York corporation, you would have signed it on the color kept in the Baltimore office? A. That is right.

Mr. Turkus: That is objectionable. That is obvious, but not all-conclusive.

9102

The Court: Overruled.

Q. And these checks which are marked Defendants' Exhibit 7 are the color checks— A. In the New York office of the New York corporation.

Q. We are talking about 1936, and you are limiting your answer to that; is that correct? A. That is right.

Q. One other question: What was your custom in Baltimore with respect to signing checks on the Baltimore corporation for use in Baltimore for payroll and other matters, in September,

Carl Shapiro—Recalled for Defts.—Recross

9103

1936? A. I just recall— No, I have got that twisted. Like today I am here, I have some blank checks signed in Baltimore. Anything that would come up would necessitate being paid, they would have blank checks that are signed so they can continue with the every-day course of matters that come up. We happen to have someone trustworthy there and bonded, and that is our policy and has been since the inception of the business. There is today signed blank checks there, but never did we have a similar situation in the New York office.

9104

Q. In other words, you never had signed blank checks in the New York office? A. No, sir.

Mr. Wegman: That is all.

Recross-examination by Mr. Turkus:

Q. The New York office, you had your niece, Naomi Shapiro, there? A. That is right.

Q. You would not leave her with a \$132.50 check—yes or no? A. I would leave her anything she wanted.

9105

Q. Answer the question yes or no. A. We did not leave signed checks in the New York office.

Q. Only in the Baltimore office? A. Only in the Baltimore office.

Q. Didn't you produce these exhibits, Defendants' Exhibits 8 and 9, out of your wallet? A. That is right.

Q. Didn't you tell us that the Baltimore office is closed Thanksgiving? A. I have carried these checks for weeks.

Q. Answer the question. A. One is not relative to the other.

9106

Carl Shapiro—Recalled for Defts.—Recross

Q. You let the jury decide that. Don't be judge and jury. You answer questions, Mister.

(Question read) Didn't you tell us that? A. Yes, I did.

Q. So that you had these checks, the green, in advance of yesterday? A. That is right.

Q. And in advance of Wednesday? A. That is right.

Q. You have been carrying them in your wallet? A. That is right.

9107

Q. And they were taken out of your wallet and they bear the numbers 9668 and 9669? A. That is right.

Q. What in the world would stop you from writing this check out in New York? A. There is ten checks you have there, and I have two checks here.

Q. Answer the question. A. That is not the case; that is not the situation.

9108

Q. You don't decide this case. Let the jury decide it. What in the world would prevent you from right up here in New York writing out these checks, the Baltimore checks, the green-colored checks, which clear through a New York bank? A. For the simple reason—

Q. Will you answer that? Is there anything in the world that would stop you? A. There is no sense to it.

Q. And what in the world would stop you when you get the pink-colored checks from the New York check book down in Baltimore, from signing it down there? A. These checks are for my own convenience, Mr. Turkus, and please let me explain that to you.

Carl Shapiro—Recalled for Defts.—Redirect

9109

Q. You can explain when Mr. Wegman, who represents the Raleigh, goes over this matter. Explain to me what in the world would stop you down in Baltimore from taking these pink-colored checks, Defendants' Exhibit 9, out of your wallet and signing them in Baltimore? A. Nothing, but I do not do it.

Mr. Turkus: All right, that is all I wanted to know. The jury can see they are both blank. May I exhibit these checks to the jury.

9110

The Court: Pass them around. All right.

Redirect examination by Mr. Wegman:

Q. Mr. Turkus said you could explain when I questioned you. I now ask you to explain.

Mr. Turkus: Explain what? Just a minute.

The Court: Be definite.

9111

Q. In response to Mr. Turkus' question as to why couldn't you sign the New York office checks in Baltimore and the Baltimore office checks in New York, since you had both kinds in your wallet, you said that you wanted to explain. Mr. Turkus said he wanted a yes or no answer, but you could explain when I questioned you. I now ask you to explain. A. These checks I carry solely in case of an emergency that I should need additional funds for one reason or another, like going out an evening with a buyer or some

9112 *Carl Shapiro—Recalled for Defts.—Redirect*

unexpected expense when I am not in the office of either New York or Baltimore corporations. They are strictly for convenience of my personal self.

Q. So that if you should happen to be out in Baltimore, you have got the Baltimore blank checks to use, and if you happen to be out in New York, you have the New York checks? A. Not necessarily. That does not mean anything. I could use either one of them. That does not imply anything.

9113

Q. And those checks that you carry with you are not checks which are ever used for the ordinary course of business? A. No, sir.

Mr. Turkus: Just a minute. That is Mr. Wegman's testimony, to which the witness has just said, "No, sir."

The Court: Overruled.

Mr. Turkus: I tried to get an objection in.

The Court: Overruled.

9114

Mr. Wegman: That is all.

John J. Canevary—For Defts.—Direct

9115

JOHN J. CANEVARY, residing at 2401 Cortelyou Road, Brooklyn, New York, called as a witness on behalf of the defendant Buchalter, and being first duly sworn, testified as follows:

Direct examination by Mr. Barshay:

Q. Mr. Canevary, you are a stenographer attached to the District Attorney's office of Kings County? A. I am.

Q. And you have been also a stenographer attached to the office of Kings County District Attorney in the prior administration? A. That is correct.

9116

Q. When were you appointed? A. I was sworn in on January 4, 1937.

Q. And you have continued since? A. That is right.

Q. You have taken statements of witnesses and defendants since you have been attached to the D. A.'s office as stenographer, have you? A. Yes, sir.

Q. All together how many times? A. Roughly I would say approximately about a thousand statements.

9117

Q. A thousand statements. While you were in the office were you attached to what you would call the squad which goes out and leaves the office under an Assistant District Attorney and take down notes of whatever the Assistant District Attorney asks of people and the answers those persons make? A. Yes, sir.

Q. Is that so? A. That is right.

Q. Whether you were at home or in the office,

9118

John J. Canerari—For Defts.—Direct

if you were on duty, that was your job? A. That is right.

Q. You carried with you a notebook for that purpose? A. Yes, sir.

Q. A notebook which was kept in the regular rotation and had to be filed when finished in the office of the District Attorney? A. Yes, sir.

9119

Q. Will you explain to this Court and jury what procedure you followed when you were acting as a stenographer for any Assistant District Attorney on any investigation? What was your work?

Mr. Turkus: I object to this. It is incompetent, irrelevant, immaterial.

The Court: Sustained.

Mr. Barshay: Exception.

9120

Q. You were the stenographer who took the statement of Mr. Rubin in Mr. Hogan's office of Dewey's staff on December 16, 1937, referring specifically to Exhibit Z-16 for identification; isn't that so? A. Yes, sir. I do not know the exhibit number.

Mr. Barshay: Well, Mr. Turkus gave it to me.

Mr. Turkus: Gave you the exhibit number.

Mr. Barshay: That is right.

Q. Was it not the custom for any of the witnesses you questioned or any of the defendants you questioned, to sign and swear to the statements that you transcribed?

John J. Canevari—For Defts.—Direct

9121

Mr. Turkus: I object to this. It is incompetent, irrelevant and immaterial.

The Court: Sustained.

Mr. Barshay: Exception.

Q. On this particular night when you took the statement or the particular day, did you transcribe the statement for Rubin in Mr. Dewey's office? A. I did not.

Q. In the ordinary course of events and in the carrying out of your duties, wasn't it a fact that all your transcriptions were made when you got back to the office of the District Attorney in Brooklyn?

9122

Mr. Turkus: I object to it. The custom is nothing in this case.

The Court: Sustained.

Q. Wasn't it the custom for witnesses and defendants who were questioned by Assistant District Attorneys and whose statements you later transcribed, not to transcribe— I cannot hear with all this noise. I withdraw the question.

9123

Q. Wasn't it the practice that after you took the notes, acting as stenographer, for you to go back and transcribe those notes in the office? Wasn't it?

Mr. Turkus: I object to it. Custom has nothing to do with it.

Mr. Barshay: I am going to show your Honor that the custom in practice then was followed out in this case, to show

9124

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that Mr. Rubin did not sign that statement because that was not the practice in the D.A.'s office. That is all I am trying to prove.

Mr. Turkus: So what? Nobody said he signed any statement. That is not part of the People's case. I object to this, please the Court. It has nothing to do with the case at all.

The Court: Sustained.

9125

Mr. Barshay: Exception. I just want to prove to the Court that there was no exception made in this case, that is all.

The Court: This is nothing for the jury.

Mr. Barshay: Why, of course it is.

The Court: It only tends to confuse.

Mr. Barshay: I beg your Honor's pardon.

The Court: I know the custom as well as you do. When you get a little smattering of this before the jury and some jurymen goes off the handle on it—

9126

Mr. Barshay: I make an offer of proof, your Honor, so that Mr. Turkus—

The Court: Don't make offers of proof. Ask your questions and the Court will rule.

Mr. Barshay: I have done it. I do not want to be put in the false position of having Mr. Turkus say this statement was not sworn to, and I have a right to prove that no statement is sworn to or signed by any witness, not only Rubin.

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9127

Mr. Turkus: I am not going to talk about that statement not being sworn to.

Mr. Barshay: You are not!

Mr. Turkus: Of course not.

Mr. Barshay: Witness withdrawn.

Mr. Turkus: Wait a minute. There may be something I want to bring out. Will your Honor just give me a moment?

Cross-examination by Mr. Turkus:

9128

Q. Mr. Canevari, you have worked on this Lepke case, haven't you, for some part of your time? A. I have.

Q. This Exhibit Z-16, concerning which Mr. Barshay referred, will you take a look at that (handing papers to witness)? Just sufficiently to see whether that is the statement that you typed up. A. It is.

Q. Mr. Canevari, when you typed it up, how many did you make, of Z-16, an original and how many copies? A. Original and two copies.

Q. What was done with the original and the two copies? A. I filed the two copies in our regular file room, and the original was given to Mr. Dore, chief clerk, at that time.

9129

Q. Since the file came into the possession of Mr. Joseph, Mr. Klein and Turkus for preparation, were you asked to find Z-16, the original and the two copies? A. I was.

Mr. Barshay: I object to what he was asked. Just a second.

The Court: I think I know what this is. Overruled.

9130

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Mr. Barshay: Exception.

Q. Did you find the original?

Mr. Barshay: I object to it, sir.

The Court: Overruled.

Mr. Barshay: Exception.

A. I did.

Q. Did you look for the two copies? A. I did.

9131

Mr. Barshay: I object to it.

Q. Have you ever succeeded in finding the two copies of Z-16?

Mr. Barshay: I object to it, sir.

The Court: Sustained.

A. No.

Mr. Turkus: That is all.

9132

Mr. Barshay: I have a request for the marking of certain exhibits for identification, your Honor, referring specifically to Exhibit Z-18 for identification. It has been marked as one exhibit, your Honor, and I should like permission to have certain documents within this file marked specially as exhibits for identification.

The Court: What is this?

Mr. Barshay: These are the records which were subpoenaed by counsel for defendant Buchalter concerning the surveillance of the defendant Buchalter.

Colloquy

9133

The Court: You mean police records?

Mr. Barshay: Yes.

Mr. Turkus: They contain other matters. Your Honor may recall the incident in the absence of the jury that we had with Mr. Wegman regarding the contents of those papers.

The Court: The question is now simply to mark for identification on the record?

Mr. Turkus: They are already marked up and bundled up.

9134

Mr. Barshay: These records contain, I am informed, the reports of policemen over an extended period of time. I should like to have marked for identification now these records, if there are any in here, for September 11, 1936, September 12, 13, all the way up to the 20th, specifically.

Mr. Turkus: The whole bundle is marked for identification.

Mr. Barshay: I know that, Judge, but I don't control this bundle after the trial of this case, but neither does Mr. Turkus.

9135

Mr. Turkus: I'll tell you what we can do, if you are worried about it. We can seal it now. We will put some sealing wax on it and seal it.

The Court: That is a good suggestion.

Mr. Barshay: Any way you please, Judge.

The Court: (to clerk) Will you get some sealing wax, Mr. Clark? Let these remain on Mr. Clark's desk until the recess, and then Mr. Turkus may take them, be-

Colloquy

9136

cause the clerk will assume no responsibility.

Mr. Turkus: They are under our responsibility.

The Court: But in the meantime send to the office for sealing wax. If there is none there, send out and get some at once, and see that they are sealed before the noon recess, in the presence of the Court.

9137

Mr. Turkus: May we put this statement on record: that pursuant to the order of your Honor the police may have access to them under the Court's supervision?

Mr. Barshay: That I objected to.

The Court: The policeman may have access to them with the Court's permission and in the presence of the Court.

Mr. Barshay: That I consent to.

Mr. Turkus: That is all I asked for. It was my suggestion.

9138

The Court: Only in the presence of the Court.

Mr. Barshay: Defendant Buchalter rests.

The Court: Take the defense of defendant Weiss.

Mr. Talley: I ask the District Attorney to produce Harry Cohen for examination. I wish to call your Honor's attention to the fact that at one of the preceding sessions we called upon the District Attorney to produce certain police forms known as D.D. 4's and D.D. 5's. Your Honor turned them over to the District Attor-

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9139

ney to look them over and then indicate to you something with respect to their contents. I ask that that now be done.

The Court: Which do you want first, Cohen or these D.D. 4's and 5's?

Mr. Talley: I thought while waiting for Cohen to be produced your Honor might pass upon these.

Mr. Turkus: It won't take long. He will be right in.

Mr. Talley: I would like to have, if we are going to get those D.D. 4's and D.D. 5's, I would like to have them this morning.

9140

HARRY COHEN, residing at 32 Glenmore Avenue, Brooklyn, New York, called as a witness on behalf of the defendant Weiss, and being first duly sworn, testified as follows:

Direct examination by Mr. Talley:

9141

Q. Cohen, on Thursday, October 30th of this year you were brought into the court-room while this trial was in progress, the court-room adjoining this one, and you gave your name and address in the open court. Do you remember that? A. I did.

Q. The day before that, which would be October 29th, Wednesday, you were picked up by detectives from the District Attorney's office, were you not? A. I did.

9142

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Q. Where did they get you, at your home?
A. That is right.

Q. Was that in Bristol Street? A. That is right.

Q. And have you been in the custody of the District Attorney's office or the Police Department since that date? A. That is right.

Q. And where have you been confined? A. Hotel Bossert.

9143

Q. And you have been living at the Hotel Bossert since October 29th; is that right? A. That is right.

Q. You sleep at the Hotel Bossert; you take your meals there; is that right? A. That is right.

Q. When before October 29th of this year did you last see Sholem Bernstein, who was a witness in this case? A. At the District Attorney's office.

Q. When?

9144

Mr. Turkus: I object to it if that is a collateral matter that he is going into.

Mr. Talley: Collateral nothing.

Mr. Turkus: Just a minute.

The Court: Will you wait just a minute?

Mr. Turkus: Don't get so perturbed.

Mr. Talley: What is your Honor's ruling?

The Court: Wait a minute.

Mr. Talley: Pardon me.

The Court: What is the question?

(Question read.)

Mr. Turkus: I object to it—collateral.

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9145

The Court: You mean it was not in this matter?

Mr. Turkus: No, it is a collateral matter, having in mind the testimony of Bernstein. On cross-examination Mr. Talley asked Bernstein about seeing this man in the District Attorney's office. He was bound by the answer as a collateral matter.

The Court: Sustained.

Mr. Talley: I except, if your Honor pleases. I never heard of a situation such as is presented to your Honor by the District Attorney. A witness is called for the prosecution here to give certain evidence.

9146

The Court: Judge, that rule of evidence is as old as the hills.

Mr. Talley: I know how old it is and I also know its application and I respectfully submit the rule that your Honor apparently has in mind has no application here at all. Here is one of the most vital things in this case, where Bernstein describes this man as an automobile and a radio thief and tells us when he saw him, and I call this man to get his version of when he saw him.

9147

The Court: Don't argue the law. Don't argue a point of evidence in the hearing of the jury. It is too plain. It is calculated to throw the jury off. No more of it.

Mr. Talley: I have no objection to your Honor dismissing the jury for the purpose of this. It is of vital importance.

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The Court: No, the point is too simple.

Mr. Talley: That is what amazes me at your Honor's ruling, it is so simple.

The Court: Maybe it does amaze you but it is perfectly clear to the Court. No more colloquy.

Mr. Talley: I except to your Honor's ruling, to your Honor's statements.

9149

Q. When you saw for the last time Sholem Bernstein in the District Attorney's office, was Mr. Turkus present?

Mr. Turkus: I object to it. It is incompetent, irrelevant and immaterial.

The Court: Sustained.

Mr. Talley: Exception. Will your Honor indulge me for a moment, please?

9150

The Court: Judge Talley, insofar as your questions have relation to an attempted contradiction on a pure matter of collateral impeachment, they are out; but if you have a purpose in showing something that is competent evidence that happened between this witness and someone in the District Attorney's office and it has a bearing upon the issue to be decided by the jury, you may do that.

Mr. Talley: I cannot do that, your Honor, unless I can get the time fixed when he saw Bernstein in the District Attorney's office. I have got to get the time fixed, the occasion.

The Court: Precisely what is it you wish to show?

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9151

Mr. Talley: The witness Bernstein testified that this man stole the automobile which was used in connection with the killing of the deceased—

The Court: I know what he testified to. But just what do you want to show?

Mr. Talley: You will have to let me make this statement to you to be intelligible.

The Court: All right.

Mr. Talley: He testified that he had not seen this witness since he himself was taken into custody in May of 1940. That is not collateral matter. That is fundamental. This man, he says, was an accomplice of his in the murder.

9152

The Court: Don't argue it. Just tell me what you want to show.

Mr. Turkus: Judge Talley is stating things on the record where he is completely involved. He is getting all balled up.

The Court: The Court cannot rule intelligently unless the purpose of the proposed evidence is lucidly and calmly stated.

9153

Mr. Talley: I am about to state it now. I will state it as simply as I can. Bernstein says he has not seen this man since May, 1940. I have reason to believe that this witness can testify that he saw Bernstein in the District Attorney's office, in the presence of Mr. Turkus, this year, 1941, a year after the witness testified and tried to make this jury believe since he has seen this witness Cohen. That

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certainly is not collateral matter. That goes right down in the essence of the case. I certainly have a right, if a false statement of that kind is made by an accomplice witness, to contradict him. It is not collateral.

The Court: Is that all?

9155

Mr. Talley: I have reason to believe the testimony given by Bernstein with respect to this witness' participation in the theft of that car was false and that this witness will tell us so.

The Court: On the former point you are bound by the rule as to collateral evidence. You are bound by the limitation which is established thoroughly by law. On the latter point you may inquire.

By Mr. Talley:

Q. Did you see Mr. Turkus in the District Attorney's office with respect to this case?

9156

Mr. Turkus: Object to it; your Honor has just sustained it.

The Court: That is what I will not permit but I will permit you to inquire into the other matter.

Mr. Talley: Will you just let me get it plain without attempting, as your Honor designates it, to argue?

The Court: No, there has been enough of it and I have ruled.

Mr. Talley: Exception to your Honor's ruling.

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9157

Q. Did you make a statement to the District Attorney in reference to this case, in May of 1941, this year? A. I did.

Q. And who was present when you made the statement?

Mr. Turkus: Objected to.

The Court: Sustained.

Mr. Talley: Exception.

Q. In May of 1941 did you see Sholem Bernstein in the District Attorney's office?

9158

Mr. Turkus: That has been objected to and sustained already.

The Court: Don't persist in that. You are out of order.

Mr. Talley: Exception.

The Court: I respect you, Judge Talley, and I want to show you every possible courtesy. Please don't persist in that. The Court is having quite a strain trying this case.

9159

Mr. Talley: Counsel is having quite a strain keeping up with your Honor's rulings, let me assure you of that.

The Court: Very well. As long as you keep within the rulings you will have no strain. You may cross-examine as to any matters testified to by Sholem Bernstein in his direct, in connection with this witness— I mean you may examine.

Mr. Talley: One of the things that Sholem Bernstein testified to was the time he last saw this witness.

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The Court: Please don't argue any further.

Mr. Rosenthal: May I take an exception to that ruling?

The Court: Which ruling?

Mr. Rosenthal: To the ruling that we may only cross-examine this witness in so far as—

9161

The Court: I did not say cross-examine. I say you may examine and I did not say "only" either. That is what made me wonder what you are excepting to, if you are excepting to the Court's suggestion as to what may be the subject of examination. The Court is not making that an exclusive ruling. The questions will be ruled upon as asked but once ruled upon counsel will be in order and take his exception and let it go at that and not engage in wrangling.

Mr. Turkus: May the record show, your Honor, there has been no exclusion of cross-examination?

9162

Mr. Rosenthal: I cannot hear you.

Mr. Turkus: May the record show there has been no exclusion of cross-examination yet by any of the defendants?

The Court: It is not cross-examination.

Mr. Turkus: No, it is direct examination by Mr. Talley but there are other counsel in the case who may cross-examine, and may the record indicate—

The Court: It is perfectly plain that the Court, by slip of the tongue, at one time said "cross-examine". This was

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almost immediately corrected. Don't make a mountain out of a mole hill.

By Mr. Talley:

Q. When you were brought to the District Attorney's office, did you talk with Mr. Turkus?
A. I did.

Q. And was Bernstein present when you talked with him?

Mr. Turkus: That is the fourth time, Judge.

9164

The Court: Yes. The jury is excused.

(The jury retired from the court-room.)

The Court: The court-room will remain in order until the Judge comes back. Counsel will remain in their places. Judge Talley will think it over.

(Judge Taylor retired from the court-room.)

9165

(Judge Taylor returned to the bench.)

The Court: Sometimes when we get old we incline to be quarrelsome but nevertheless with age comes wisdom and I am not dealing with the rashness of youth. I am dealing with a man I respect highly and who I think respects me and I think that possibly if I just send for the jury and resume, it won't be neces-

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sary for me to say anything more except this, that when rulings are made and exception taken, there must be no repetition. When a somewhat younger lawyer at an earlier stage of the trial repeated a question after the Court had ruled, the Court allowed itself to become unduly annoyed. I am not going to permit myself to be so annoyed again. Bring the jury back.

9167

Mr. Talley: Will your Honor look at the close of the cross-examination of Bernstein, one of the last questions asked on the cross-examination of Bernstein with respect to when he last saw this witness? If your Honor will look at that, my position might be a little clearer to you.

The Court: That was on October 30th?

Mr. Talley: October 30th, yes, sir.

The Court: Mr. Turkus, have you volume two?

Mr. Turkus: This is volume one.

9168

The Court: I cannot bring all these books in all the time. They are getting too voluminous. You mean your cross-examination?

Mr. Talley: Yes, sir.

The Court: That is in volume one. That was on October 28th, beginning with page 741, ending with 745. You mean the last question. There are several pages will have to be reviewed. I will read them now.

Mr. Talley: There is only one question and answer with which we are concerned.

The Court: Not the last one. The

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9169

last question and answer was: "That was four years after Rosen was killed which was in September of 1936."

Mr. Turkus: That is a different Cohen, Judge. That Cohen from 741 to 745 is a different Cohen, not this witness Cohen.

Mr. Talley: Bernstein is the testimony to which I am referring. The question was, "When did you see Muggsy Cohen last?" He said, "I have not seen him since I was picked up."

9170

The Court: I have to refer back to see what he is talking about.

Mr. Talley: That is what he is talking about.

The Court: If you will just be patient. Is this Irving Cohen, this witness?

Mr. Talley: No. This witness has been referred to by the name of Muggsy during part of the examination. There is only one Cohen being talked about.

Mr. Turkus: You spoke about more than one.

9171

Mr. Talley: That is Muggsy Cohen who he said stole the car.

Mr. Turkus: Nobody can get along with you. If you want to hold the floor go ahead. I am trying to help you.

Mr. Talley: I may have the minutes and, if you will indulge me, I will point out the question.

The Court: Begin at page 743 and read on to and including 745. You will see, "Were you asked those questions and did

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you make those replies on the trial of Irving Cohen in Monticello?"

Mr. Talley: No, no, that is not it at all, sir.

Mr. Turkus: That was your cross-examination.

Mr. Talley: That was the Gangi Cohen trial up in Monticello.

9173

The Court: Pardon me, I am referring to something you asked me to look at. I found something that is right here. May I make a suggestion that is practical? If you desire, as I thought you said, to have this witness contradict any testimony by Sholem Bernstein in relation to the alleged murder ear, why don't you take that up now because we have only eighteen minutes to go before the recess and then during the recess you can straighten this out on the record as to the rest of your examination.

9174

Mr. Talley: The only thing we have to straighten out, sir, is to find that question that I put to him and his answer. We can do that in two minutes.

The Court: I think I would go ahead with the other and do the other and read the record during the noon recess.

(The jury returned to the court-room.)

By Mr. Talley:

Q. After you were questioned by Assistant District Attorney Turkus, Cohen, you were not put under arrest, were you? A. No, sir.

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9175

Q. Were you questioned about the killing of Joseph Rosen?

Mr. Turkus: Objection as to form. It is incompetent.

Mr. Talley: I have a right to show it was in connection with this case. That is all I want.

The Court: Overruled.

Mr. Turkus: The question was, was he spoken to about the automobile.

9176

Q. What is your answer, Cohen? A. Please repeat that.

(Pending question read.)

A. I wasn't.

Q. You were not? A. Was not.

Q. What were you questioned about? A. About the automobile.

Q. About the automobile that was used in the killing of Joseph Rosen? A. There was not anything mentioned about Joseph Rosen, just about the automobile on this particular day that was stolen.

9177

Q. Yes, and what particular day was that? A. I don't remember the exact date.

Q. Was it about the 11th of September, 1936? A. I think it was.

Q. And you told them all you knew about that, did you? A. I did.

Q. And after you told them what you knew about that, you were allowed to go home? A. I did.

9178

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Q. You were not taken in custody from that time up to the day before you were brought here in this case which was October 30th of this year, last month? A. That is right.

Q. Have you ever been charged with the theft of the automobile that was used in the killing of Joseph Rosen?

Mr. Turkus: Objection. What has this got to do with the issue of the case?

9179

M... Talley: Everything.

The Court: Overruled.

A. I wasn't.

Q. Have you ever been charged with participating, being a principal or an accomplice, in the murder of Joseph Rosen? A. I was not.

Q. On what charge are you being held now? A. No charge to my knowledge.

Q. No charge to your knowledge? And since you have been held you have not been in any prison, have you? A. I was not.

9180

Q. You have been in the Hotel Bossert?

Mr. Talley: Now, with due deference to the Court, I ask permission to ask this witness when he was in the District Attorney's office but we have had so much confusion about that that I am putting it to your Honor before I ask the witness.

The Court: Will you wait just a minute? He said, didn't he, that in May, 1940, he made a statement in the District Attorney's office?

Mr. Talley: May, 1941, I am quite sure.

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The Court: You have the date?

Mr. Talley: May, 1941. If your Honor will give me about three minutes, I will find that question and answer. May we just keep this witness on the stand?

The Court: Surely.

Mr. Talley: For that length of time?

The Court: Yes.

Mr. Talley: Will your Honor look at page 696 of the record, 696 and 697?

The Court: Yes.

9182

Mr. Talley: May I read them to you as I was going to do when the record was taken away from me?

Mr. Turkus: Do you want to read them to the Judge?

Mr. Talley: I did at the time you grabbed it.

Mr. Turkus: I think he reads English.

The Court: The Court is already reading it. Proceed with your questioning.

Mr. Talley: In view of your Honor's ruling, which I accept with great respect, having noted my exception, I accept because I must; I accept it because I think it is erroneous; I have no further questions unless your Honor will let me pursue that line.

9183

The Court: Do you propose to cross-examine as to any of the matters brought out by the District Attorney in which this witness' name was mentioned?

Mr. Talley: Not at this time.

The Court: By Bernstein. You have a right to.

9184

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Mr. Talley: Your Honor has denied me the right that I insist is mine and was the main reason of my calling this witness.

The Court: There is testimony here as to the alleged stealing of the automobile.

Mr. Talley: Yes, sir.

The Court: Do you wish to cross-examine on it?

Mr. Talley: Not at this stage of this case.

9185

The Court: All right. In reference to the stealing of the radio or any of the collateral circumstances?

Mr. Talley: I have no more questions at this time. It may develop later on but at this time I do not propose to question this witness.

The Court: That is all right.

(To Witness) You may leave the stand.

Mr. Turkus: Just a minute, your Honor, there are other defendants that may want to ask—

9186

The Court: Does anybody else want to examine him? There is nothing to cross-examine on, is there?

Mr. Turkus: I know what this picture is very well.

The Court: Anybody else wish to question?

Mr. Climenko: Not I, your Honor.

Mr. Rosenthal: I have no questions.

Mr. Turkus: As to the District Attorney I will ask your Honor to recess now

Harry Cohen—For Defts.—Cross

9187

It is five minutes before the scheduled time.

The Court: There is practically nothing here.

Mr. Turkus: I know, but there is something I may want to make in the way of a motion or there is something I may want to do. I ask for a recess at this time.

Mr. Talley: May I ask the Court to direct that neither the District Attorney nor anybody else interview this witness while he is on the stand. I suggest that the examination proceed now. It cannot be very lengthy.

9188

The Court: Proceed.

Mr. Talley: According to your Honor's limitation rather than have this recess.

Mr. Turkus: The first motion is to strike out his entire testimony.

The Court: Denied.

Mr. Turkus: As having no relevancy in the case.

9189

Cross-examination by Mr. Turkus:

Q. You were in the District Attorney's office, Cohen, on April 30, 1941, weren't you? A. I was.

Q. How many days after that was it before you were taken to Talley's office? A. Between three and four weeks.

Q. In the District Attorney's office you made an affidavit, swore to it and signed every page, didn't you? A. I did.

Q. Speak up so everybody can hear you. After

9190

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the signing of the affidavit in the District Attorney's office, were you at Amboy Street near East New York Avenue? A. I was.

Q. Did a man drive up in an automobile and introduce himself to you? A. That is right.

Q. Is that the man who brought you up to Talley's office at a later time? A. That is right.

Q. Who is that man? A. Sidney Weiss.

Q. The brother of the defendant Mendy Weiss, is that right? A. That is what he told me he was.

9191

Q. When Sidney Weiss came over in that automobile or called you over to the automobile, didn't he? A. He did.

Q. Speak up so we can hear you. Your answer is "He did". In that automobile were two other men besides Sidney Weiss, weren't there? A. There was.

Q. You did not know those two other men? A. Did not.

Q. And Sidney Weiss said to you, didn't he, "I heard that you were in the District Attorney's office"?

9192

Mr. Talley: I object, if your Honor please, upon the ground this is not proper cross-examination and unless the District Attorney is making this witness his own witness, he cannot proceed with these questions under the theory of cross-examination.

The Court: You will have to make him your own witness on that.

Mr. Turkus: As to that conversation?

Mr. Talley: As to all of these matters.

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Mr. Turkus: You see, Judge, that is why I asked for a recess. I wanted to study this direct testimony.

The Court: There is not much to study.

Mr. Turkus: Well, I know, but it is a maneuver and I wanted to study it. I knew what I was doing when I asked for time. I have no hesitation in bringing out everything that is pertinent in the case but I wanted five minutes to study the record that was apparent needed studying and that was denied me. Now I ask for the recess now. There is only two minutes to go.

9194

The Court: He has testified briefly that he was brought in for identification on October 30th. We all know that. That identifies him as Muggsy. Then he said in May, 1941, he made a statement in the District Attorney's office. This was allowed in because I thought maybe they wanted to try to confront him with a statement or to use it at the proper time if and when it would be made competent under the rules of evidence. Then he said he was not questioned about the killing of Rosen; he was questioned about the stealing of the auto; that he has never been charged with the murder of Rosen or held for the theft of the auto. There it rests.

9195

Mr. Turkus: I move to strike it out. That motion was denied.

The Court: That stays in the record. But you are now making this man your own witness.

9196

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Mr. Turkus: Well, it is now a minute to go and I ask for the recess.

The Court: Go ahead.

Mr. Cuff: I join in the request, Judge, for personal reasons.

The Court: I am not playing favorites.

Mr. Turkus: Weiss' lawyer just asked for the recess.

Mr. Cuff: You might call me by my name. I think you know my name.

9197

Mr. Turkus: I did not mean it that way.

The Court: That request is, I understand, on a different basis. That is on a purely personal basis.

Mr. Cuff: I said that.

Mr. Turkus: I wanted to show there was a dual request.

The Court: When Mr. Cuff wants a recess he can get it at any time during the trial, for personal reasons. Then we will take the lunch now.

9198

Gentlemen of the jury, please do not discuss the case, let nobody talk to you about it. Keep your minds open. We will resume promptly at 1:30. Everybody remain seated while the witness leaves the stand.

Mr. Talley: Your Honor's direction to this witness and his attendance on the District Attorney, I trust has to be given?

The Court: Yes, but the Court has no supervision. I don't value those instructions. They are too easily violated.

Mr. Talley: But your Honor can give them.

Harry Cohen—For Defts.—Redirect

9199

Mr. Turkus: They will not be violated on this end.

The Court: I give them but I assume no responsibility.

Now the jury out the other door.

Defendants are remanded.

(A recess was thereupon taken to 1:30 P. M.)

9200

(AFTERNOON SESSION. TRIAL RESUMED.)

HARRY COHEN, resumed the stand, and further testified, as follows:

Mr. Turkus: The recess provided me sufficient time to study the purport of the direct examination. At this time, there is no further cross-examination by the District Attorney. I say, "At this time".

Redirect examination by Mr. Talley

9201

Q. Cohen, just before recess the District Attorney asked you if you had signed a statement in the District Attorney's office, do you remember that? A. Yes, sir.

Q. You said you did? A. Yes, sir, that is right.

Q. When was that statement signed? A. Around about six months ago; I do not remember the exact date.

Q. Do you make that about May, do you think, this year? A. I guess so.

9202

Harry Cohen—For Defts.—Redirect

Q. Who was present at the time you made that statement to the District Attorney?

Mr. Turkus: That is the same question we went over on direct.

The Court: That very thing was sustained.

Mr. Talley: May I say this to your Honor—

The Court: No.

9203

Mr. Talley: I respectfully except to your Honor's ruling on the ground that the statement—

The Court: Not upon the ground—the grounds need not be stated.

Mr. Talley: I take exception to your Honor's ruling which refuses to allow me to state the grounds of my objection. I thought your Honor might sustain the objection.

The Court: The jury may leave.

Mr. Talley: I ask you not to let this jury go.

9204

The Court: The jury may leave.

(The jury leaves the court room.)

The Court: You may now finish what you wanted to say.

Mr. Talley: This question, I respectfully submit, is made competent by reason of the fact that the door was opened to it for examination along that line by the District Attorney when he asked this witness if he had not made a statement and an affidavit. He said, "In his office."

Harry Cohen—For Defts.—Redirect

9205

That having been introduced by the District Attorney, I submit I have a right to inquire into the circumstances under which that statement was made.

The Court: The ruling on the last question stands.

Mr. Talley: I respectfully take exception to your Honor's ruling. That is all I can do.

Mr. Turkus: May I say this for the record—

9206

The Court: No.

Mr. Turkus: It is important that we have the record straight.

The Court: Go ahead.

Mr. Turkus: He said, "Under the circumstances under which it was secured." That was not the purport of that question. The purport of the question was to attempt to impeach Sholem Bernstein on a collateral matter, not "circumstances".

Mr. Talley: The statement had nothing to do with the impeachment of Sholem with what I claim.

9207

The Court: The Court understands the situation. It was not the first time that the Court has faced it. It has gotten used to it. Bring back the jury.

Mr. Talley (Addressing Mr. Turkus): Are you finished?

Mr. Turkus: Judge Talley begins to ask a question of me in the absence of the jury. He says, "Are you finished?" He is on re-direct. I will be finished when he gets through with his re-direct.

9208

Sidney Weiss—For Defts.—Direct

(The jury then returned to the court room.)

Mr. Talley: I have no further questions of this witness.

9209

SIDNEY WEISS, residing at 10 Monroe Street, Borough of Manhattan, City and State of New York, called as a witness on behalf of the defense, after being duly sworn, testified as follows:

Direct examination by Mr. Talley:

Q. Are you a brother of Emanuel Weiss, one of the defendants on trial in this case? A. Yes, sir.

Q. Who do you live with? A. My mother and my brother.

Q. Your brother is living with you? A. Sammy Weiss.

9210

Q. Sammy Weiss, the boy who is in the Army? A. Yes, sir.

Q. Where do you live? A. Number 10 Monroe Street, New York.

Q. How long have you been living at number 10 Monroe Street, Manhattan? A. Six and one-half years.

Q. Do you remember the night of the 12th of September, 1936? A. Yes, sir, I do.

Q. Did you see your brother Mendy Weiss on that day or evening? A. Yes, sir, I did.

Q. In the evening, at what time did you see him? A. At ten o'clock.

Sidney Weiss—For Defts.—Direct

9211

Q. Where did you see him? A. In my brother Sammy's store.

Q. Where was your brother Sammy's store?

A. At that time it was on East Broadway.

Q. What kind of a store was it? A. An automobile store.

Q. Will you relate the circumstances under which you saw your brother Mendy at that time, on this Saturday night, September 12th? A. Yes, sir.

Q. What are the circumstances under which you saw your brother Mendy that night? A. We were going out to celebrate my birthday, my twenty-sixth birthday.

9212

Q. When was your birthday? A. My birthday, September 13, 1910, I was born.

Q. You were born on the 10th, this was your twenty-sixth birthday? A. Yes, sir.

Q. On Sunday, the 13th? A. Yes, sir.

Q. Was a party arranged to celebrate it? A. Yes, sir, it was.

Mr. Turkus: I object. Let the witness testify.

9213

Mr. Talley: That is what I called him for.

Q. Will you state what happened on that night, did you meet him at Sammy's store? A. Yes, sir.

Q. Who was present at Sammy's store that night? A. My brother and Sammy.

Q. Were you there before they came? A. My mother and Sammy were there before I came.

Q. Was Mendy there when you arrived or did he come later? A. He came later.

9214

Sidney Weiss--For Defts.--Direct

Q. And what time did he come? A. Around ten o'clock.

Q. Who was with him when he came? A. His wife and Dottie.

Q. What is Dottie's other name? A. Eisenstein.

Q. Eisenberg—is she a friend of Mrs. Weiss?

9215

Mr. Turkus: Just a minute. There have been two names given, one by the witness and one by the lawyer.

Mr. Talley: Let the witness tell us the name. What is Dottie's name?

The Witness. Dottie Eisenstein, I think.

Mr. Turkus: May we have it spelled by the witness.

Q. Can you spell it for the District Attorney?
A. No, sir.

Q. Did you go any place from there? A. Yes, sir.

9216

Q. Where did you go? A. To a restaurant.

Q. Who was in the party? A. Who was in the party?

Q. Yes, who was in the group that went from Sammy's store to the restaurant? A. My brother, Mendy, myself, my mother, Blanche, and Dottie.

Q. Did you go by automobile from Sammy's store? A. Yes, sir, we did.

Q. Where did you go? A. To the restaurant.

Q. Where was the restaurant? A. The Brass Rail.

Q. Where was that? A. 7th Avenue and 49th Street.

Q. Did you all go in there? A. Yes, sir, we did.

Q. Who was driving the car you went there with? A. My brother Mendy.

Q. Did he park the car somewhere before you went in the restaurant? A. We got out of the car and he went to park the car.

Q. Did you wait for him in front of the Brass Rail Restaurant? A. Yes, sir.

Q. Then did you all go in and have something to eat and drink? A. Yes, sir.

Q. At what time do you say it was Saturday night when you got to the Brass Rail Restaurant? A. Sometime around 10:30.

Q. How long did you stay there? A. It was over an hour.

Q. That would bring you around past 11:30, would it? A. I think a little latter than that.

Q. Nearer to 12:00 o'clock? A. That is right.

Q. Where did you go when you left the Brass Rail? A. We went to a movie.

Q. Do you know what movie it was? A. Yes, sir, the Capitol movies.

Q. At the Capitol Theatre? A. Yes, sir.

Q. That is about a block away from this Brass Rail? A. A block or two away.

Q. Did you walk from the restaurant to the Capitol Theatre? A. Yes, sir.

Q. Were you going to the midnight show there? A. Yes, sir.

Q. Did you all go into the Capitol Theatre? A. Yes, sir, we did.

Q. Did you see the entire performance? A. Yes, sir, we did.

Q. What time was it when you came out of

9220

Sidney Weiss—For Defts.—Direct

the Capitol Theatre? A. I would say some time after 2:00.

Q. After 2:00 o'clock in the morning? A. Yes, sir.

Q. And these same persons were with you in the theatre and came out of the theatre with you? A. Yes, sir.

Q. Then, did somebody go after the car? A. My brother Mendy went for the car.

Q. You waited for him in front of the theatre? A. Yes, sir.

9221

Q. Then he came back in the car? A. Yes, sir.

Q. Did you all get into the car again? A. Yes, sir.

Q. Was any suggestion made by anybody about taking a ride? A. I think it was made by my mother.

Q. What did she say? A. It was a little warm, and she said, "We will take a ride."

Q. And did you take a ride? A. Yes, sir.

Q. Where did you go? A. I think we took a ride through the park.

Q. Through Central Park? A. Yes, sir.

9222

Q. After you drove around Central Park, where did you go? A. We went downtown.

Q. To another restaurant? A. Yes, sir.

Q. What restaurant did you go to? A. To Ratner's Restaurant on Delancey Street.

Q. Ratner's is a favorite and popular place over there on the East Side? A. Yes, sir.

Q. It is a great restaurant for Jewish people down there, isn't it? A. Yes, sir.

Q. They specialize in Jewish types of food? A. Yes, sir.

Q. Were the same persons in the group at this restaurant? A. Yes, sir.

Q. And how long did you stay there? A. Close to one hour.

Q. And what time do you say you came out of the Capitol Theatre, that was about 2:00 o'clock, what did you do? A. It was after 2:00.

Q. What time was it when you got down to the restaurant downtown? A. It was almost 3:00 o'clock.

Q. You went into the restaurant of Ratner's and had something to eat and drink there, did you? A. We had something to eat.

Q. There were no drinks served there? A. No, sir.

Q. How long do you say you remained in Ratner's Restaurant? A. Close to an hour.

Q. That would bring it up to what time when you were leaving? A. I would say something around 4:00 o'clock, before 4:00 o'clock.

Q. Where did you go then? A. I went home.

Q. With your mother? A. Yes, sir.

Q. Who drove you home? A. My brother Mendy.

Q. Was Mrs. Weiss and Dorothy in the car when you took your mother home? A. Yes, sir.

Q. That was to Monroe Street? A. Yes, sir.

Q. Did you remain at your mother's house or did you go out— Question withdrawn.

Q. Just you and your mother went up to your house, is that right? A. That is right.

Q. Where did Mendy go? A. He went home.

Q. Still driving the car? A. Yes, sir.

Q. When you last saw him, was his wife and Dottie with him? A. That is right.

Q. And you left them at the door of your home in Monroe Street? A. Yes, sir.

Q. And you and your mother went upstairs and went to bed? A. Yes, sir.

9226

Sidney Weiss—For Defts.—Cross

Q. At what time would you say it was when you left Mendy and Mrs. Weiss and Dottie? A. 4:00 o'clock.

Q. About 4:00 o'clock on Sunday morning, September 13th, is that right? A. Yes, sir.

Q. Did you see Mendy again on that Sunday after you parted with him at 4:00 o'clock in the morning? A. No, sir.

Q. Was this party for your birthday a special occasion? A. Yes, sir.

9227

Q. Why? A. It was my twenty-sixth and we were celebrating.

Q. Was it arranged by your mother? A. Yes, sir.

Q. And at her suggestion, was it her suggestion? A. Yes, sir, that is right.

Q. Had you ever celebrated your birthday before that twenty-sixth by going out to a restaurant and a movie? A. No, sir.

Q. Was there a particular reason for this one, did you and Mendy have a little row before this? A. Yes, sir.

9228

Q. Did your mother suggest that he give a party and make up with you, is that how it happened? A. Yes, sir.

Mr. Turkus: May this paper be marked for identification.

(Received and marked People's Exhibit Z-26, for identification.)

Cross examination by Mr. Turkus:

Q. What is your business? A. Music business.

Q. Where is it located? A. 58 Lewis Street, Manhattan.

Q. What is the name of the company? A. The Klick Vending Company.

Q. How do you spell Klick? A. K-l-i-c-k.

Q. How many years have you been in the music business with the Klick Vending Company? A. I own the business.

Q. How many years have you owned the business? A. Around seven years.

Q. Now, in addition to music machines, do you rent any other machines from the Klick? A. Yes, sir.

9230

Q. What kind of machines? A. Pin games.

Q. Pin ball machines? A. Yes, sir.

Q. Music machines, what are they—are they jute boxes? A. Yes, sir.

Q. Distributed in saloons, bars and grills? A. And luncheonettes, and candy stores.

Q. And the pin ball machines, where are they located? A. In candy stores.

Q. Your efforts are limited to New York City, aren't they? A. No.

Q. Are they up in Sullivan County? A. I never went there.

9231

Q. Did you ever have Klick Vending machines in Sullivan County? A. No, sir.

Q. Who else was in this Klick Vending Company besides yourself? A. I own the business myself.

Q. No one else interested? A. No, sir.

Q. How many jute boxes have you? A. Sixty.

Q. Every one of them in New York City? A. Well, a few in Brooklyn.

Q. How many in Brooklyn? A. Not many.

9232

Sidney Weiss—For Defts.—Cross

Q. Well, how many is that? A. Around ten, I would say.

Q. The ones you have in Brooklyn, where are they? A. In saloons, bars and grills and candy stores.

Q. In what bars and grills have you got these jute boxes? A. Well, not the bars and grills.

9233

Q. Tell me. You own the business and certainly ought to know that. A. Off-hand, I can tell you one on Broadway and Driggs; Havemeyer, right off Broadway; one on Third Avenue and sixty some odd street.

Q. Where? A. Sixty some odd street. I cannot remember them all off-hand. I can give you my files to show you.

Q. Have you any around Borough Hall? A. No, sir.

Q. Any around Pineapple Street? A. No, sir.

Q. How many pin ball machines do you say?

9234

Mr. Talley: I object to this as incompetent, immaterial and irrelevant, has no bearing upon anything brought out on direct examination.

The Court: Objection overruled.

Mr. Talley: Exception.

A. Around ten.

Q. Where are they located? A. Different parts of the city.

Q. In Brooklyn? A. One.

Q. Where is that? A. Havemeyer and Grand Street Extension, in Williamsburg.

Q. Do you know Jack Drucker? A. No, sir.

Q. You never met him? A. No, sir.

Q. Did you have any business with him in slot machines up-State? A. I never had any slot machines.

Q. Pin ball machines? A. Not up-State.

Q. Is your telephone number "Drydock 4-8150"? A. The telephone number is Gramercy 5-8630.

Q. Was it ever "Drydock 4-8150"? A. Yes.

Q. When? A. Before the number was changed.

Q. When was the number changed? A. Over a year or a year and a half ago.

9236

Q. Do you know a man named Yiddle Lorber? A. Yes, sir.

Q. How long have you know Yiddle Lorber? A. All my life.

Q. Do you know a man named Engelson? A. Yes, sir.

Q. How long have you known him? A. A number of years.

Q. Did you meet him through Mendy?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

9237

The Court: Objection overruled.

Mr. Talley: Exception.

A. I met him through Abe.

Q. Abie Lorber? A. Yes, sir.

Q. What business were you in before you went into jute boxes and pin balls? A. No business.

Q. How old were you when you left school? A. Around sixteen.

Q. From sixteen to twenty-four, what did you do? A. I was in no business. I worked for different concerns.

9238

Sidney Weiss—For Defts.—Cross

Q. What kind of jobs did you have? A. When I left school I was an errand boy, and I worked for a dress house; I worked for a trucking concern.

Q. For eight years you did these things? A. Off and on, yes, sir.

Q. Who put you in the jute box and pin ball business?

9239

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. Nobody; I went in myself.

Q. Did you have any partners? A. No, sir.

Q. No associates? A. No, sir.

Q. Yet you operated those ten machines? A. Sixty music machines.

Q. I show you People's Exhibit Z-26, for identification, and ask you if you can identify that picture. A. Yes, sir.

Q. Whose is it? A. My brother Sammy.

9240

Q. Did you take that picture? A. No, sir.

Q. When did you see it before you just saw it now? A. I never seen it.

Q. This is the first time you have seen that picture? A. Yes, sir.

Q. Is that of your brother Sammy when you testified about when Judge Talley was asking you questions? A. Yes, sir.

Q. You did not snap that picture? A. No, sir.

Q. How far is number 58 Lewis Street from Lewis and Grand? A. About two and a half blocks.

Sidney Weiss—For Defts.—Cross

9241

Q. And from Lewis and Cannon? A. From where?

Q. From 58 Lewis Street? A. Lewis and Cannon? There is no Lewis and Cannon.

Q. How far is it from this Gold candy store? A. Gold?

Q. Yes. A. Where is Gold's?

Q. Lewis and Grand, up near the police station, don't you know that? A. Lewis and Grand—police station—there is no police station there.

Mr. Talley: Are you talking about Manhattan or Brooklyn?

9242

Q. Manhattan, near your place? A. My place is Lewis near Delancey Street.

Q. How far away from Lewis and Grand Street is it? A. About two and a half blocks.

Q. Do you know Gold's candy store? A. No, sir.

Q. Is there a restaurant, or was there a restaurant on Lewis and Grand? A. Yes, sir.

Q. What is the name of that restaurant? A. I don't know.

9243

Q. Was it a restaurant where you got service—not a cafeteria? A. It was a bar.

Q. And a restaurant, where you got service by a waiter, somebody waiting on the tables? A. I don't know.

Q. Were there any hangers-on in that Klick Vending Machine Company?

Mr. Talley: I object to it as improper cross examination, and as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

9244

Sidney Weiss—For Defts.—Cross

A. I don't know what you mean by hangers-on.

Q. Did you ever see Bugs Workman there?

A. No, sir.

Q. Did you know him? A. Well, I seen him, but I did not know him.

Q. Where did you see Charlie the Bug? A. I was born and brought up on the East Side; I lived all my life on the East Side.

Q. You did not go to school with the Bug?

A. No, sir, I am not sure; I seen him.

9245

Q. Where did you see him? A. I used to pass in a car and seen him on Cannon Street.

Q. Cannon and where? A. Cannon and Stanton.

Q. Did you ever see him with Mendy? A. Not as I can recollect.

Q. Did you ever see him with Allie Tannenbaum? A. I don't know Allie Tannenbaum.

Q. You know Little Farvel? A. Yes, sir.

Q. How long have you known Little Farvel?

A. For a number of years.

Q. How many years is that? A. Say around ten years.

9246

Q. Where did you see Little Farvel?

Mr. Talley: I object to that as having no bearing, not proper cross-examination, improper, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I seen him downtown.

Q. In the ten years you have known little Farvel, did you know him socially? A. Well, yes, I knew him, not socially; I was born and brought up on the East Side.

Q. I know that, but in the ten years did you ever go out with him socially? A. Well, I would not say—no, I did not go out with him; I knew him.

Q. Were you ever in his company? A. Yes, sir.

Q. How many times have you been in the company of Farvel Cohen? A. I could not say.

Q. More than ten? A. Well, yes.

Q. More than twenty? A. I don't know; lots of times I was.

Q. Can you give me an estimate? A. No, sir.

Q. It was more than ten at any rate? A. Yes, sir.

Q. On those occasions when you were in the company of Little Farvel, was Mendy with you? A. A few times.

Q. And was Charlie the Bug with you on those occasions?

9248

Mr. Talley: Objected to as incompetent, immaterial and irrelevant, improper cross examination.

9249

Q. Who else besides Mendy was with you and Little Farvel?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant, improper cross examination.

The Court: Objection overruled.

Mr. Talley: Exception.

A. Well, I don't remember any particular times seeing them together. I know him for a number of years. I was actually brought up in the neighborhood.

9250

Sidney Weiss—For Defts.—Cross

Q. We have this all now. A. I could not tell you how many times I seen him, but it was a number of times.

Q. Who else besides Mendy was with you and little Farvel? A. Weil, I cannot remember any particular time.

Q. Let us see if I can refresh your recollection. Did you Louis Kravitz? A. No, sir.

Q. Sometimes known as Louis Kay? A. No, sir.

9251

Q. Did you know Sam Feinstein? A. No, sir.

Q. The fellow they call Toots Feinstein? A. No, sir.

Q. Did you know Izzy Bartfield? A. No, sir.

Q. Did you know Sidney Sales, Shimmy? A. Yes, sir.

Q. Did you ever see Mendy and Bartfield and Shimmy together?

Mr. Talley: Objected to as improper cross examination; incompetent, immaterial and irrelevant.

9252

The Court: Objection overruled.

Mr. Talley: Exception.

A. I think I seen them.

Q. Were you out with Shimmy? A. No, sir.

Q. Danny Fields, did you know him? A. Yes, sir.

Mr. Talley: I make the same objection.

The Court: Objection overruled.

Mr. Talley: Exception.

Q. How about Benny Levine?

Sidney Weiss—For Defts.—Cross

9253

Mr. Talley: I make the same objection.

The Court: Objection overruled.

Mr. Talley: Exception.

Q. Do you know him? A. No, sir.

Q. Well, now Dimples—Moe Wolinsky?

Mr. Talley: I object.

The Court: Objection overruled.

Mr. Talley: Exception.

9254

Q. Did you know Dimples? A. No, sir.

Q. Did you know Tom Koppewitz? A. No, sir.

Q. You did not know Cuppie? A. No, sir.

Q. You never met Jake Drucker?

Mr. Talley: Objected to.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

Q. Did you know Paul Berger?

9255

Mr. Talley: The same objection.

The Court: The same ruling.

Mr. Talley: Exception.

A. No, sir.

Q. Didn't you ever work for Paul Berger? A. No, sir.

Q. You told us you were on a truck, do you remember? A. I worked for a trucking concern.

Q. Was it the clothing trucking? A. No, sir.

9256

Sidney Weiss—For Defts.—Cross

Q. What kind of a trucking concern? A. It was trucking shoes.

Q. You never trucked clothes? A. No, sir.

Q. Were you on the payroll of any clothing trucker, without working? A. I was never on nobody's payroll.

Q. I am asking you. A. No, sir.

Q. Do you know Henzie Teitelbaum?

Mr. Talley: I make the same objection.

9257

The Court: Objection overruled

Mr. Talley: Exception.

A. I think I seen him, I don't know.

Q. Aren't you sure you know Henzie Teitelbaum? A. No, sir. I know lots of people that are born over on the East Side, I know lots of people.

Q. We understand that. Would you say Teitelbaum was Lepke's chauffeur? Does that help you? A. No, sir, but I think I know him.

9258

Q. Where do you know him from? A. From the East Side.

Q. Have you seen him with Mendy? A. Not as I can recall.

Q. Did you see him with Farvel Cohen? A. Not as I recall.

Q. Or with Charlie the Bug?

Mr. Talley: I object.

The Court: Objection overruled.

Mr. Talley: Exception.

A. Not as I can recall.

Q. Were you and Mendy friendly? A. Yes, sir.

Q. You live at number 10 Monroe Street? A. Yes, sir.

Q. Where did Mendy live in September of 1936? A. 301 East 21st Street.

Q. In Brooklyn? A. In Manhattan.

Q. Where did he live in 1937? A. I don't know.

Q. Where did he live in 1938? A. In Brooklyn.

9260

Q. Where, in Brooklyn, the number, what street? A. I think he lived at Park Place, I am not sure.

Q. Let me give you a number, and see if that will help you, 230 Park Place? A. I think so.

Q. Did you ever visit that apartment? A. Yes, sir.

Q. Do you know whether it was on the third floor of 230 Park Place? A. I don't know what floor.

Q. How many times were you to 230 Park Place?

9261

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. Not many times.

Q. Under what name did your brother live at 230 Park Place?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

9262

Sidney Weiss—For Defts.—Cross

The Court: Objection overruled.

Mr. Talley: Exception.

A. Hoffman.

Q. He was living there with his wife as Mrs. Hoffman? A. I guess so.

Q. Don't you know that Mendy and his wife were living at 230 Park Place as Mr. and Mrs. Hoffman?

9263

Mr. Talley: What year is this?

Mr. Turkus: 1937, according to his testimony.

The Witness: I did not say 1937.

Mr. Turkus: 1938, excuse me.

Mr. Talley: I object to it as too remote, two years after the alleged crime.

The Court: Overruled.

Mr. Talley: Exception.

A. Yes, sir.

9264

Q. On the occasions when you visited at 230 Park Place did you see friends of Mendy's up there? A. No, sir.

Q. On any occasion that you visited, did you see an outside person there who did not belong to the family? A. I don't remember.

Q. Don't you know whether Allie Tannenbaum was a visitor there when you were there? A. I don't know Allie.

Q. And Bugs, Charlie Workman?

Mr. Talley: I object again to this enumeration of names—The man told him he knew nothing of them.

Sidney Weiss—For Defts.—Cross

9265

The Court: Objection overruled.

Mr. Talley: Exception.

Q. Does that help to refresh your recollection?

A. I never seen him.

Q. You never saw Charley there? A. No, sir.

Mr. Talley: Objected to.

The Court: Objection overruled.

Mr. Talley: Exception.

9266

Q. Can you remember one person outside of Mendy and his wife whom you saw at 230 Park Place? A. My mother, my brother Sammy, and different members of my family.

Q. I mean outside of the family circle, did you ever see outsiders up there at 230 Park Place, when you visited there? A. Yes, sir, I saw Dottie.

Q. How do you spell Dottie's last name? A. I don't know.

Q. You knew Dottie since before 1936—how many years before that did you know this Dottie? A. I knew her for a number of years.

9267

Q. How many years is a "number"? A. I cannot tell you.

Q. She was attending an intimate affair, a birthday party of yours that you remembered away back in 1936, how long before that did you know this Dottie? A. I know her for a number of years.

Q. She was not there as your girl friend, was she? A. I said I knew her for a number of years.

9268

Sidney Weiss—For Defts.—Cross

Mr. Talley: I object to it.

The Court: Objection overruled.

Mr. Talley: Exception.

Mr. Talley: He has not finished his answer.

Q. Do you want to say anything further than that? A. No, sir.

Q. She was at this birthday party as your girl friend, was she? A. No, sir.

9269

Q. She was not there as Sammy's friend? A. No, sir.

Q. She certainly was not there as Mendy's girl friend? A. No, sir.

Q. What business is that Dottie in? A. She is a girl friend of Mendy's wife.

Q. What is her business? A. I said—

Q. What is that? A. I said nothing.

Q. Answer the question. You are supposed to say something. A. I did not get a chance.

Mr. Turkus: I ask to have the question read.

9270

(Pending question read.)

Q. What is her business? A. I know she is married: I don't know if she has any business.

Q. Do you know her husband? A. Yes, sir.

Q. What is his name? A. I know him, Yonkel.

Q. Yonkel was not at the birthday party with his wife? A. No, sir.

Q. Did you invite Mrs. Eisenstein to the birthday party? A. No, sir.

Q. Now, at 301 East 21st Street, where Mendy lived, what name was he living under in that house? A. Weiss.

Sidney Weiss—For Defts.—Cross

9271

Q. When first to your knowledge did he change his name? A. I don't know.

Q. You know he changed his name at 230 Park Place? A. He lived under the name of Hoffman.

Q. Well, now, when for the first time did you know that Mendy had changed his name from Weiss to some other name?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant; improper in form.

9272

The Court: Objection overruled.

Mr. Talley: Exception.

A. As far as I know, the time he had the apartment.

Q. The time he took the apartment at 230? A. Yes, sir.

Q. How many times did you visit him at 301 East 21st Street? A. Not many times—Can I have a drink of water?

(Witness handed glass of water.)

9273

Q. You know Yonkel is a pickpocket, isn't he?

Mr. Talley: Objected to as highly improper.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I don't know.

Q. Why, you had this woman at your birthday party; didn't you know her husband was a pickpocket?

9274

Sidney Weiss—For Defts.—Cross

Mr. Talley: I make the same objection.

The Court: Same ruling.

Mr. Talley: Exception.

A. I did not know.

Q. After your brother lived at 230 Park Place, Brooklyn, where did he live? A. He lived in 12th Avenue and 46th Street, in Brooklyn.

Q. Do you know the number? A. No, sir.

9275

Q. What was the name? A. The name was Newman, I think.

Q. And Blanche lived there as Mrs. Newman, is that right? A. He lived there under the name of Newman.

Q. Did you visit him there when he lived there under the name of Newman? A. A few times.

Q. On the few occasions did you see Blanche there? A. Yes, sir.

Q. Who else did you see besides the members of your family when Mendy lived under the name of Newman?

9276

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I don't think I seen any.

Q. Did you ever see Lorber up there?

Mr. Talley: I make the same objection.

The Court: The same ruling.

Mr. Talley: Exception.

A. I did not.

Sidney Weiss—For Defts.—Cross

9277

Q. Did you see Engelson? A. I don't know him.

Q. Did you ever see a man up there named Shafer?

Mr. Talley: I make the same objection.

The Court: Same ruling.

Mr. Talley: Exception.

A. I don't know.

Q. Do you remember seeing any of Mendy's associates when he was living under the name of Newman, at his apartment?

9278

Mr. Talley: I make the same objection.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I don't think so.

Q. Now, after he moved out of the place where he was known as Newman, what was his next address? A. I don't think he had any more apartments.

Q. Where did he live? A. I do not know.

9279

Q. Well, you and he are brothers; you and he were friendly. Didn't you know where he lived?

Mr. Talley: Objected to as argumentative, not proper cross-examination.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I did not know that.

Q. Did the members of your family, including

9280

Sidney Weiss—For Defts.—Cross

your mother, visit Mendy when he lived under the name of Newman on 12th Avenue?

Mr. Talley: I object. He can testify as to his own visits, but I don't know how he can testify to any others.

The Court: He can say whether or not he saw them there. The objection is overruled.

The Witness: Yes, sir.

9281

Mr. Talley: I except.

Q. Under the name of Newman? A. Yes, sir.

Q. Did Mendy ever tell you why he was living in Park Place under the name of Hoffman—yes or no?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

9282

A. No.

Q. Did you ever ask him—yes or no?

Mr. Talley: I object to that.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No.

Q. Did Mendy ever tell you why he was living under the name of Newman?

Mr. Talley: Objected to.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No.

Q. Did you ever ask him? A. No.

Mr. Talley: I make the same objection.

The Court: Same ruling.

Mr. Talley: Exception.

Q. Did you know Cuppy? A. Yes, sir.

9284

Mr. Talley: I make the same objection.

The Court: Objection overruled.

Mr. Talley: Exception.

Q. How long did you know Cuppy? A. For a number of years.

Q. Well, that is very indefinite. Can you give me a better estimate? A. Say around nine or ten years.

Q. Did you associate with him? A. Well, I knew him. I was a friend.

Q. Did you associate with him? A. I was his friend.

9285

Q. Was he an associate of your brother Mendy's? A. He knew him.

Q. Did you see them together? A. Yes, sir.

Q. What was Cuppy's right name? A. Migden.

Q. (Spelling) M-i-g-d-e-n? A. Yes.

Q. Were you connected with the Texas Centennial Fair? A. No, sir.

Q. Wasn't Cuppy your partner at the Texas Centennial Fair? A. He was never my partner.

Q. Did you have any machines there operating.

9286

Sidney Weiss—For Defts.—Cross

vending machines, operating at the Texas Centennial Fair in 1935 or 1936?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant; I cannot see what possible bearing that has on the issue here.

The Court: Objection overruled.

Mr. Talley: Exception.

9287

A. I was operating machines in the city.

Q. And not at the Texas Centennial Fair?

A. No, sir.

Q. Did you ship any there to Migden? A. No, sir.

Q. What is Migden's wife's name?

Mr. Talley: Objected to as immaterial, incompetent and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

9288

A. I don't think he was ever married.

Q. Did you know Ruth Migden? A. His sister?

Q. Is that his sister? A. Ruth Migden, yes, sir.

Q. Ruth Migden is Cuppy's sister? A. Yes, sir.

Q. Weren't you in Texas during the course of the Texas Fair? A. I was never in Texas in my life.

Q. Didn't you leave Migden in Texas during the Texas Fair, either in 1935 or 1936? A. I was never in Texas in my life.

Q. Where did your brother move from the address where he lived under the name of Newman? A. I don't know.

Q. What year was that he moved out of there, do you know? A. I would say sometime in 1940; I don't know; I believe it was around 1940.

Q. In September, 1936, under what name was Mendy living?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

9290

The Court: Objection overruled.

Mr. Talley: Exception.

A. Weiss.

Q. Did you see Cuppy in either 230 Park Place, the apartment where your brother lived under the name of Hoffman, or at 12th Avenue, where he lived under the name of Newman? A. I don't remember.

Mr. Talley: I make the same objection.

The Court: The same ruling.

Mr. Talley: Exception.

9291

Q. During the early part of March, 1940, when did you call a man named Benjamin Portman on his home telephone—

Mr. Talley: That is objected to as improper cross-examination, incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. What month?

9292

Sidney Weiss—For Defts.—Cross

Q. The early part of March, 1941. A. I know I called him. I don't know whether it was March or April.

Q. You did call Benjamin Portman on the long distance phone, you remember? A. Yes, sir.

Q. Where was Benjamin Portman when you called him, what city?

Mr. Talley: I make the same objection.

The Court: Objection overruled.

9293

Mr. Talley: Exception.

A. Kansas City.

Q. Kansas City, Missouri? A. Yes, sir.

Q. In that telephone conversation did you say you were Sidney Bell from New York City?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant, not proper cross-examination.

The Court: Objection overruled.

Mr. Talley: Exception.

9294

A. No, sir.

Q. You did not? A. No, sir.

Q. Did you ask Benjamin Portman for "Big Jim"?

Mr. Talley: I make the same objection.

The Court: Same ruling.

Mr. Talley: Exception.

A. No, sir.

Q. Didn't you, in that telephone conversation with Benjamin Portman in Kansas City, Mis-

souri, say you were Sidney Bell of New York City, a brother of Big Jim? A. No, sir.

Q. Didn't you tell Portman you would like to contact Big Jim immediately?

Mr. Talley: I make the same objection.

The Court: The same ruling.

Mr. Talley: Exception.

A. No, sir.

Q. Didn't Portman say to you he did not know where to pick up Big Jim, and he hung up the receiver?

Mr. Talley: I make the same objection, and on the further ground that apparently the District Attorney is trying to put in evidence telephone calls, which I think are illegal. This wire-tapping business the law does not permit any more.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No.

Q. On the occasion when you spoke to Portman on the telephone where were you?

Mr. Talley: I make the same objection.

The Court: Objection overruled.

Mr. Talley: Exception.

A. In the city.

Q. What city? A. New York City.

Q. Before you telephoned Benjamin Portman, had you ever met him in your life?

9298

Sidney Weiss—For Defts.—Cross

Mr. Talley: I make the same objection.

The Court: Objection overruled.

Mr. Talley: Exception.

A. Yes, sir.

Q. Where? A. In Kansas City.

Q. When did you meet Portman in Kansas City, Missouri? A. In 1940.

Q. What month in 1940? A. Sometime in October.

9299

Q. Now, in October of 1940, after you say you met Portman for the first time—who introduced you to him?

Mr. Talley: I make the same objection, not proper cross-examination.

The Court: Objection overruled.

Mr. Talley: Exception.

A. My brother.

Q. Your brother Mendy? A. Yes.

Q. At the time you were introduced to Benjamin Portman, was your brother's wife, Blanche Weiss, with him? A. Yes, sir.

9300

Q. At the time you were introduced to Portman, your brother Mendy Weiss was living in Kansas City, Missouri, under the name of Bell, wasn't he? A. That is right.

Q. James Bell, wasn't he? A. Bell.

Q. Didn't you know the first name your brother Mendy was using? A. No, sir.

Q. You did not know, in Kansas City, when you were there with him, that he was under the name of Jim Bell or James Bell? A. I know he was under the name of Bell.

Q. You did not know the first name he was using? A. Not as I remember.

Q. This "Big Jim," wasn't he known as Big Jim Bell? A. No, sir.

Q. Can you remember now the first name your brother was using in Kansas City, Missouri, when you were there? A. No, sir.

Q. Weren't you introduced to Portman under the name of Sidney Bell, a brother of brother Mendy? A. I was introduced to Portman by the name of Sidney.

9302

Q. Weren't you introduced by the name of Sidney Bell? A. I was introduced by the name of Sidney.

Q. With no last name? A. No, sir.

Q. How many times did you meet Portman while in Kansas City? A. Three times.

Q. Now, the first time was the introduction in the presence of Blanche. What was the second time? A. I think around January, 1941.

Q. In between the first visit to Kansas City and the second time you met Portman, were you living in Kansas City? A. Yes.

Q. How long did you stay in Kansas City on the first trip? A. Around two days.

9303

Q. Where did you stay for the two days you were in Kansas City? A. At my brother's house.

Q. Where was your brother's house located? A. I think the address is somewhere on 46th Terrace, or something, in Kansas City.

Q. Terrace Drive? A. Something like that.

Q. In January, 1941, on your second visit, where did you stay? A. At my brother's house.

Q. Still on this Terrace Drive, in Kansas City? A. No.

9304

Sidney Weiss—For Defts.—Cross

Q. Where? A. I think at 48th Street, Kansas City.

Q. Was that Highland Avenue? A. I don't know.

Q. Was there a woman named Fay Dilly living there? A. No, sir.

Q. Do you know Fay Dilly? A. Not as I remember.

Q. See if I can refresh your recollection—she was Benny Portman's girl friend, wasn't she? A. Not as far as I know.

9305

Q. Did you ever hear of her with Benny Portman? A. I don't know who she is.

Q. In January, 1941, who did you stop with, Mendy? A. I did.

Q. Still living under the name of Bell? A. I think he lived under the name of Miller.

Q. Are you sure that was in Kansas City, where he lived under the name of Miller? A. I think Kansas City.

Q. Let us see. Was that outside of the city limits? A. I don't think so.

9306

Q. Let us see if we can get the first address. Was it 420 West 46th Street Terrace, where you stopped for two days in Kansas City? A. I know it is 46th Street Terrace.

Q. Does 420 West 46th Street Terrace, Kansas City, Missouri, refresh your recollection? A. I don't know the number.

Q. Now, the place where he was living under the name of Miller, was that at West 48th Street? Was it 700 West 48th Street? A. I think so.

Q. How long did you stop there on that occasion? A. Just a few days.

Q. Wasn't your brother living in Apartment 30 in that building under the name of Miller? A.

Sidney Weiss—For Defts.—Cross

9307

I don't know what apartment; he lived under the name of Miller.

Q. Did you stop in the apartment? A. Yes, sir.

Q. Wasn't Cuppy there? A. No, sir.

Q. Didn't you see Jacob Migden, alias Cuppy, right in the apartment where your brother lived under the name of Miller at 700 West 48th Street, Kansas City? A. No, sir.

Mr. Talley: I object to the cross-examination of his own witness. Your Honor must hold he has made this witness his own now, and as such he cannot cross-examine him.

9308

The Court: Objection overruled.

Mr. Talley: Exception.

Q. Did you at any time while you were in the apartment on West 48th Street where your brother was living under the name of Miller, see Cuppy? A. No, sir.

Mr. Talley: Objected to as already answered, not once, but twice.

9309

The Court: He has answered it.

Q. Was there a colored superintendent there named Henry Horton? A. I don't know.

Q. Who is Rose Weiss? A. Rose Weiss?

Q. Yes, Rose Weiss. A. That is the sister-in-law of mine.

Q. What is her husband's name? A. Max Weiss.

Q. Did you see Rose Weiss there when your brother was living under the name of Miller?

9310

Sidney Weiss—For Defts.—Cross

Mr. Talley: Same objection.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

Q. How long did you stay in Kansas City at the time you were visiting Mendy under the name of Miller? A. A few days.

9311

Mr. Talley: Objected to as already answered.

The Court: Objection sustained.

Q. How many is a few days? A. Two days.

Q. Now, when was the third time you went to Kansas City, Missouri? A. I think in April.

Q. April of what year? A. 1941.

Q. How long did you stay in Kansas City during the month of April, 1941? A. One day.

Q. On your first trip, that was the time you met this Portman? A. Yes.

Q. And on the second trip did you meet Portman again? A. Yes, sir.

9312

Q. Did you meet Portman, under the name of Bell, on the second trip? A. No, sir.

Q. What name did Benny Portman call you when he spoke to you? A. Sidney.

Q. Any other name, last name? A. No, sir.

Q. Now, on the third trip to Kansas City did you meet Portman?

Mr. Talley: Objected to as already answered.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I don't think so.

Sidney Weiss—For Defts.—Cross

9313

Q. Were you aiding and abetting your brother, Mendy Weiss, in maintaining and concealing himself as a fugitive from justice under the name of Miller and Bell? A. I don't understand what you mean.

Q. Didn't you know your brother was a fugitive from justice on the occasions you visited him in Kansas City, Missouri?

Mr. Talley: That is objected to as incompetent, immaterial and irrelevant.

9314

The Court: Objection overruled. This comes under Section 2 of the Penal Law, and therefore is competent on the question of knowledge.

Mr. Talley: It certainly calls for a conclusion and is improper as evidence.

The Court: I am weighing that—that is a borderline. He cannot say whether he knows, but, on the question of impeachment, he can say whether or not he so believed.

Mr. Talley: That is objected to, and if the question is put in that form it is objectionable again, and I object to it on the grounds already stated, with respect to the preceding question.

9315

The Court: Objection overruled.

Mr. Talley: Exception.

Q. Did you believe at the time you visited him in Kansas City, Missouri, where he was living under the names of Miller and Bell, that he was a fugitive from justice? A. When I seen him in Kansas City—

9316

Sidney Weiss—For Defts.—Cross

Q. Did you—yes or no? A. I cannot answer it that way. I have to explain.

Q. Can you answer whether you believed him to be a fugitive from justice when you visited him under the circumstances you have related to this jury?

Mr. Talley: I object on the grounds already stated.

The Court: Objection overruled.

9317

Mr. Talley: Exception.

Q. Can you answer that yes or no? A. I cannot answer it yes or no.

Q. Well, don't answer it at all. When you were in Kansas City did you meet a man named Morris Saul?

Mr. Talley: I make the same objection.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir, I do not think so.

9318

Q. Did you meet a man named Morris Solwinsky?

Mr. Talley: I make the same objection.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I don't remember. I met a few people, but I do not remember their names.

Q. Well, let us see if I cannot help to refresh your recollection. Did you meet this fellow Saul and his wife at the Portman home?

Sidney Weiss—For Defts.—Cross

9319

Mr. Talley: I make the same objection.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I met Portman at Portman's home.

Q. Do you remember a man named Morris Saul, true name Morris Salinsky? A. I do not.

Mr. Talley: I object.

The Court: Objection overruled.

Mr. Talley: Exception.

9320

Q. Did you meet one Walter Rainey? A. I think so.

Q. Now, Benny Portman is a big-time gambler in Missouri, and known to you to be such?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I do not know his business.

Q. Do you know it now? A. If you say so.

9321

Q. Not if I say so. Do you know it? A. No, sir.

The Court: The objection is good unless he knew at the time of the alleged association.

Q. Were you introduced at Portman's home as Sidney Bell? A. No, sir.

Q. Before going out to Kansas City on your third trip, did you speak to Portman on the telephone, the long distance, from New York?

9322

Sidney Weiss—For Defts.—Cross

Mr. Talley: Objected to as incompetent, immaterial and irrelevant, not proper cross-examination.

The Court: Objection overruled.

A. I did not get the question.

Q. I will take it piece by piece and we will get along: You told us you made three trips to Kansas City? A. Yes, sir.

9323

Q. If I understood you correctly, your first trip was in October, 1940? A. Yes, sir.

Q. That you stayed there for a couple of days? A. Yes, sir.

Q. That your brother was then living under the name of Bell, at this Terrace address? A. Yes, sir.

Q. That your next trip was in January, 1941, when your brother was living on West 48th Street under the name of Miller? A. Yes, sir.

Q. You stayed a couple of days on that? A. Yes, sir.

9324

Q. Didn't you make a third trip to Kansas City, Missouri, sometime in April, 1941, when you say you spent a day there? A. Yes, sir.

Q. Just before you went on the third trip to Kansas City, in April of 1941, did you make a long distance call to Portman? A. Yes, sir.

Q. Did you tell this Benny Portman that you were going to fly out by plane immediately? A. Yes, sir.

Q. Did you take a plane from New York and its environment to Kansas City, Missouri? A. Yes, sir.

Q. Did you call at Portman's residence? A. Yes, sir.

Q. Did you take an automobile that Mendy

Sidney Weiss—For Defts.—Cross

9325

Weiss had been riding around in in Kansas City, Missouri? A. Yes, sir.

Q. Did you drive that automobile back to New York City? A. Yes, sir.

Q. Did you drive back with you Blanche? A. Yes, sir.

The Court: Blanche who?

Q. Blanche, referred to as the defendant Mendy Weiss's wife; is that correct? A. Yes, sir.

9326

Q. During the first week of August, 1941, didn't you call Morris Salinsky, sometimes known as Morris Saul, on the telephone?

Mr. Talley: I make the same objection.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I don't remember.

Q. Don't you remember you did call Morris Saul on the telephone and he hung up on you?

Mr. Talley: I make the same objection.

9327

The Court: Objection overruled.

Mr. Talley: Exception.

A. I don't remember.

Q. You don't remember calling Kansas City, Missouri, and having somebody hang up on you?

Mr. Talley: How does this witness know, what a man in Kansas City did? I object to it as incompetent, immaterial and irrelevant.

9328

Sidney Weiss—For Defts.—Cross

The Court: The point of the objection is you cannot guess as to who calls, with an interruption.

Q. Without guessing, let us ask it this way: Did you endeavor to speak to Morris Salinsky, sometimes known as Morris Saul, on the telephone and have the connection abruptly terminated?

9329

Mr. Talley: How does he know?

The Court: Were you suddenly cut off?

Mr. Talley: Objected to.

The Court: Objection overruled.

Mr. Talley: Exception.

The Witness: I don't remember if I called.

Q. Let us see if this refreshes your recollection—Didn't you then telephone Walter Rainey at his home?

9330

Mr. Talley: I make the same objection.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I think I called.

Q. You understand you are under oath? A. Yes, sir.

Mr. Talley: I object to the question in that form.

The Court: Objection overruled.

Mr. Talley: Exception.

Sidney Weiss—For Defts.—Cross

9331

Q. Did you call up Walter Rainey on the long distance telephone on or about the first week in August, 1941?

Mr. Talley: I object to that as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I don't remember.

Q. You just said you think you did, now you don't remember, which is it? A. Who are you referring to?

9332

Q. Walter Rainey. A. Yes, sir, I called him.

Q. Didn't you say, or ask Walter Rainey how things were in Kansas City, Missouri?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

The Court: In August of this year?

Mr. Turkus: Yes, August of 1941.

The Witness: I don't remember what I said to him about.

9333

Q. You don't remember the conversation? A. I mean that conversation.

Q. You are calling up long distance in Kansas City and you don't remember what you are talking about, is that your testimony?

Mr. Talley: I object to that as argumentative.

9334

Sidney Weiss—For Defts.—Cross

Q. (Continued) What you were saying? A. What are you saying what?

Q. Didn't Walter Rainey say to you, "You guys got us in a hell of a lot of trouble, and everything is red hot"?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

9335

A. I don't remember that conversation.

Q. Didn't you ask Walter Rainey why Portman and Morris Saul would not talk to you?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant; assuming something which is not in evidence; improper cross-examination.

The Court: Objection overruled.

Mr. Talley: Exception.

9336

A. I don't remember.

Q. And didn't Rainey then say to you, "I don't why they won't, but I don't give a damn, I am in the middle anyway"?

Mr. Talley: I object.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I don't remember the conversation.

Q. Do you remember what you said to Walter Rainey on the long distance telephone?

Sidney Weiss—For Defts.—Cross

9337

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection sustained.

Mr. Talley: Exception.

A. I don't remember the conversation I had.

Q. You called up in the first week of August, 1941, and spoke to a man on the long distance telephone in Kansas City and you don't remember what you said to him, do you? A. I know I called him up; I don't remember the month; I called him up this year.

9338

Q. You don't remember what he said or you said? A. I don't remember the conversation you are telling me now.

Q. I am asking you if you remember the conversation you had with Rainey? A. I mean the same thing.

Q. "I mean", is nothing.

Mr. Talley: I object to the comment of the District Attorney. It should not be permitted. There should be a limit.

9339

Mr. Turkus: I am not appealing to the Court to give me protection from any of these witnesses. I will handle them myself, and I want them to handle the questions.

Mr. Talley: You said you needed no protection from any witness?

The Court: Objection sustained as to the comment.

Q. Can you tell us what you said to Walter

9340

Sidney Weiss—For Defts.—Cross

Rainey on the long distance 'phone in August of 1941, and what he said to you; yes or no?

Mr. Talley: Objected to as already answered several times.

The Court: Sustained. He can say whether or not he knew the subject matter of the conversation.

9341

Q. Do you remember the subject matter of that call?

Mr. Talley: Objected to as already answered.

By the Court:

Q. What was it about? A. I don't remember.

Q. You don't remember that either? A. No, sir.

By Mr. Turkus:

9342

Q. Did you, in August, 1941, endeavor to reach Portman on the long distance wire to Kansas City, Missouri?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant, what he endeavored to do.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I don't remember.

Q. See if this refreshes your recollection—

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9343

didn't you call Portman in Kansas City, Missouri, and was not that telephone connection abruptly terminated?

Mr. Talley: I object as already gone over.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No.

Q. Were you in Colorado in the year 1940?

A. No, sir.

9344

Q. At any time during the year 1940 were you in the State of Colorado? A. No, sir.

Q. At any time during 1940 did you see your brother Mendy Weiss in any place other than Kansas City, Missouri? A. In 1940?

Q. Yes. A. Yes, sir, I seen him in the city.

Q. When did he leave the city and go out of town, do you know?

Mr. Talley: I object to that as improper cross-examination, incompetent, immaterial and irrelevant.

9345

The Court: Objection overruled.

Mr. Talley: Exception.

A. I seen him in the city; I don't remember what month.

Q. Didn't he leave the city suddenly?

Mr. Talley: Objected to as a conclusion, and not proper cross-examination.

The Court: Objection overruled.

Mr. Talley: Exception.

A. Not as far as I know.

9346

Sidney Weiss—For Defts.—Cross

Q. Did you know he was leaving? A. No, sir.

Q. Were you told by him with whom he was leaving?

Mr. Talley: Objected to as hearsay; incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

9347

Q. There was no farewell party for him when he was leaving New York City, was there?

Mr. Talley: I object to that as highly improper; incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

Q. No bon voyage party?

9348

Mr. Talley: I except to that.

The Court: Sustained as to that.

Mr. Talley: I withdraw my exception, then.

Q. How long after the newspapers carried an article about Allie Tannenbaum was it that you for the first time knew that Mendy was out of New York City?

Mr. Talley: Objected to as highly improper; incompetent, immaterial and irrelevant.

The Court: Objection sustained.

Q. Refresh your recollection. Wasn't your first notice that Mendy was no longer in New York City some time in May of 1940?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I don't remember when he left the city; I don't remember what month he left.

Q. What is the business of Walter Rainey whom you met in Kansas City, Missouri?

9350

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I don't know.

Q. Did you ever ask him his business?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant; calling for hearsay evidence.

9351

The Court: Overruled.

Mr. Talley: Exception.

A. No, sir.

Q. Did he ever tell you his business?

Mr. Talley: I make the same objection.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

9352

Sidney Weiss—For Defts.—Cross

Q. How many times were you in Walter Rainey's society in—

Mr. Talley (Interrupting): I make the same objection.

Q. (Continued) In Kansas City, Missouri?

The Court: Objection overruled.

Mr. Talley: Exception.

9353

A. Once or twice.

Q. On which visit, the first or the second or the third? A. I don't remember if it was the first or the second I seen him.

Q. Either the first or the second visit? A. I seen him on the third visit, too.

Q. Can you remember Morris Wolinsky, asking certain questions of him on the long distance telephone calls, does that refresh your recollection about Morris Saul or Morris Wolinsky?

Mr. Talley: I make the same objection.

9354

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

Q. Did you at any time see Cuppie in Kansas City, Missouri, on any of your visits?

Mr. Talley: Objected to as already answered; incompetent, immaterial and irrelevant; improper cross-examination.

The Court: Objection overruled.

Mr. Talley: Exception.

A. Never seen him.

Sidney Weiss—For Defts.—Cross

9355

Q. Did you ride back with Blanche Weiss and any of the personal effects of Cuppie?

Mr. Talley: I make the same objection.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

Q. In your presence, was your brother Mendy Weiss called "Big Jim" by anybody in Kansas City, Missouri?

9356

Mr. Talley: I make the same objection.

The Court: Same ruling.

Mr. Talley: Exception.

A. I don't remember anybody.

Q. In your presence, was he introduced as vice-president of the Chihuahua Tungsten Company?

Mr. Talley: Objected to.

The Court: Objection overruled.

Mr. Talley: Exception.

9357

A. I don't know.

Q. Did your brother Mendy Weiss have any talk with you about his driving cards being in the name of Bell?

Mr. Talley: I object to that as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

9358

Sidney Weiss—For Defts.—Cross

Q. Did your brother Mendy Weiss ever have any talk with you that he had a bank account in the Security National Bank, Kansas City, Kansas, under the name of Bell?

Mr. Talley: I make the same objection; highly improper.

The Court: Objection overruled.

Mr. Talley: Exception.

9359

A. No, sir.

Q. Did your brother Mendy tell you he was vice-president of the Chihuahua Tungsten Corporation, a mining and development company, at Black Hawk, Colorado? A. He said he had something to do with a mine there.

Q. He told you that? A. Yes, sir.

Q. Did your brother tell you he had fallen off a horse and been injured at Rocky Ford, Colorado?

Mr. Talley: I make the same objection.

The Court: Objection overruled.

9360

Mr. Talley: Exception.

A. I don't know where it was; he had an accident, I know.

Q. He told you about that? A. The accident.

Q. Did he tell you he was at St. Francis Hospital in Colorado? A. No, sir.

Q. When was the first time that you learned that your brother was leaving New York City in the year 1940 to go west?

Mr. Talley: I object as already gone over.

Sidney Weiss—For Defts.—Cross

9361

The Court: Objection overruled.

Mr. Talley: Exception.

A. I don't remember when he left.

Q. When did you write to him the first letter?

Mr. Talley: Objected to as immaterial; incompetent; not within the issue here; not proper cross-examination.

The Court: Objection overruled.

Mr. Talley: Exception.

9362

A. I never wrote him a letter.

Q. In all the time that you knew your brother was living in Kansas City, Missouri, under the name of Bell, and under the name of Miller, you never wrote a single letter? A. No, sir.

Q. When was the first letter you received from your brother from Kansas City, Missouri?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant; the District Attorney is going pretty far afield now, it seems.

9363

The Court: Objection overruled.

Mr. Talley: Exception.

By the Court:

Q. Do you remember it? A. I don't remember what month. I know I received a letter from him.

By Mr. Turkus:

Q. What year? A. 1940.

9364

Sidney Weiss—For Defts.—Cross

Q. What part was it in, spring, fall, summer or winter, or when? A. In the summer.

Q. And did you answer the letter? A. No, sir.

Mr. Talley: Objected to as immaterial, incompetent, irrelevant, not proper cross-examination.

The Court: Objection overruled.

Mr. Talley: Exception.

9365

Q. In that letter was the name Bell used? A. Yes, sir.

Q. Was the address listed in that letter?

Mr. Talley: The same objection, if your Honor please; not the best evidence, not proper cross-examination; incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. Yes.

Q. Where is that letter?

9366

Mr. Talley: I make the same objection.

The Court: Overruled.

Mr. Talley: Exception.

A. I must have destroyed the letter.

Q. When was the next letter received?

Mr. Talley: I make the same objection.

The Court: Objection overruled.

Mr. Talley: Exception.

A. Around the last part of the year, around December.

Sidney Weiss—For Defts.—Cross

9367

Q. What happened to that letter? A. I don't know, I must have destroyed it, I guess.

Q. Didn't you destroy it intentionally? A. I don't know; I must have destroyed it after I read it.

Q. Don't you know whether you destroyed those letters with the intent to destroy them and cause their destruction?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant. I object to the form of the question.

9368

The Court: Objection overruled.

Mr. Talley: Exception.

A. I don't remember.

Q. At any time were you in long distance telephone communication or conversation with your brother at Kansas City, Missouri?

Mr. Talley: I make the same objection.

The Court: Objection overruled.

Mr. Talley: Exception.

9369

A. No, sir.

Q. Now, when you got the second letter in the summer of 1940, was that from Colorado?

Mr. Talley: I make the same objection.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I got the first letter from Kansas City.

Q. Did you ever get a letter from Colorado?

A. No, sir.

9370

Sidney Weiss—For Defts.—Cross

Q. Where was the second letter from? A. Kansas City.

Q. Was there a third letter? A. No, sir.

Q. No third letter? A. No, sir.

Q. Did you send your brother, Mendy Weiss, under any name he may have been using, any information concerning the activities in the east here?

9371

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

Q. By activities, I mean the progress of any investigation?

Mr. Talley: I make the same objection.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I never sent him nothing.

9372

Q. Did you indirectly send him any information as to the progress of any investigation in New York City?

Mr. Talley: I make the same objection.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I never sent him nothing.

Q. Were your visits to Kansas City, Missouri, for the intention on your part to help your brother to remain a fugitive from justice?

Sidney Weiss—For Defts.—Cross

9373

Mr. Talley: Objected to as calling for a legal conclusion.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

Q. At the time you made your first visit to Kansas City, Missouri, did you know or believe that your brother was a fugitive from justice?

Mr. Talley: Objected to as already answered. Your Honor passed upon that about a half an hour ago.

9374

The Court: Objection sustained.

Q. Did you aid or abet your brother in any respect to remain and continue as a fugitive, concealed under a false name, in Kansas City, Missouri?

Mr. Talley: Objected to as calling for a conclusion.

The Court: Objection overruled.

Mr. Talley: Exception.

9375

A. No, sir.

Q. Did you destroy the letters which you received from your brother with the intention to cause obliteration and destruction of evidence which might be used against him?

Mr. Talley: Objected to as already answered and as calling for a conclusion.

The Court: Objection overruled.

Mr. Talley: Exception.

9376

Sidney Weiss—For Defts.—Cross

A. I don't remember. I destroyed the letters, that is all I know.

By the Court:

Q. When did you destroy them? A. I don't remember.

Q. In Brooklyn or New York? A. New York.

Q. In the Borough of Manhattan? A. Yes, sir.

9377

By Mr. Turkus:

Q. To whom were the letters addressed?

Mr. Talley: I object. That was already gone over. It is incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. To me.

9378

Q. And what was the address where you received them? A. At my place of business.

Q. The Klick Vending? A. Yes, sir.

Q. How soon after the receipt of them were they destroyed?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant; already gone over.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I don't remember.

Q. Was it immediately thereafter?

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9379

Mr. Talley: I make the same objection.

The Court: Same ruling.

Mr. Talley: Exception.

A. I could not tell you.

Q. Is it you could not tell me or you won't tell me? A. I could not tell you.

Q. When you visited in Kansas City, Missouri, and your brother told you he had a mining interest in the Chihuahua Mining Company, and you 'phoned him there, living under the name of Bell, did you ask him why he was living there under that name?

9380

Mr. Talley: Objected to as incompetent, immaterial and irrelevant, assuming evidence which is not in the record.

The Court: This is competent under Section 2 of the Penal Law, on the question of impeachment. Objection overruled.

Mr. Talley: Exception.

9381

A. Yes, sir.

Q. Did you ask him why? A. Yes, sir.

Q. When you talked to him in Kansas City, living under the name of Miller, did you ask him why he was living under that name?

Mr. Talley: I make the same objection.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

9382

Sidney Weiss—For Defts.—Cross

Q. Did you ask your brother when he left New York City?

Mr. Talley: I make the same objection.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I don't know if I asked him or not.

Q. Did you ask your brother when he was going to return to New York City?

9383

Mr. Talley: I make the same objection.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

Q. Did you ask your brother why he had only written you two letters since he was away?

Mr. Talley: I make the same objection.

The Court: Objection overruled.

Mr. Talley: Exception.

9384

A. No, sir.

Q. Did you ask your brother why he had not written the family since he had been away?

Mr. Talley: I make the same objection.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

Q. Did you ask him why his wife was living under the name of Rose Bell?

Mr. Talley: I make the same objection.

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9385

The Court: Objection overruled.

Mr. Talley: Exception.

A. I do not understand the question.

Q. You do not understand that question? A. No, sir.

Q. Did your brother take you to the mine which he had an interest in when you were out there? A. No, sir.

Q. You were not out there for mining business after you went out? A. No, sir.

Q. You went out to see your brother? A. Yes, sir.

9386

Q. You went out to bring him information, didn't you? A. No, sir.

Q. Didn't you go to bring him information that you did not want to entrust to the mail or telephone? A. No, sir.

Q. Was your purpose in visiting Kansas City, Missouri, for two days a social visit? A. Well, he wanted to know how the family was, and everything.

Q. Did he want to know how the O'Dwyer investigation was getting on? A. No, sir.

9387

Q. He only wanted to know how the family was? A. Yes, sir.

Q. He did not ask you if the O'Dwyer investigation or the detectives were looking for him, did he? A. No, sir.

Q. Not once in the conversations in which he spoke to you in the two day trip to Kansas City did he mention anything about the O'Dwyer District Attorney investigation in Brooklyn?

Mr. Talley: I object.

9388

Sidney Weiss—For Defts.—Cross

The Court:—Objection overruled.

Mr. Talley: Exception.

A. No, sir.

Q. Did he ask you a single question about any investigation going on in Brooklyn?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant; improper cross-examination.

9389

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

Q. While you were out there in Kansas City, Missouri, did your brother mention the name of Lepke? A. No, sir.

Q. Did he mention the name of Farvel Cohen? A. No, sir.

Q. Did he mention the name Lou Capone? A. No, sir.

Q. Did he mention the name of Allie Tannenbaum? A. No, sir.

9390

Q. Did he mention the name of Abe Reles? A. No, sir.

Q. Or Pittsburg Phil Strauss? A. No, sir.

Q. Or Harry (Happy) Maione? A. No, sir.

Q. Or "The Dasher" Abbendando? A. No, sir.

Q. Or Bugsy Goldstein? A. No, sir.

Mr. Talley: I object, your Honor, to all this enumeration; it is highly improper. I think your Honor should stop it. I have tried to stop it several times.

The Court: I know the question of as-

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9391

sociation is always competent. Objection overruled.

Mr. Talley: I take an exception, as long as your Honor understands the purport of my objection.

Q. Did he mention the name of Cuppie? A. No, sir.

Q. Did he mention the name of Max Rubin? A. No, sir.

Q. Or that of Paul Berger? A. No, sir.

9392

Mr. Talley: I have my objection, I take it, to all this line.

The Court: Yes.

Mr. Talley: And I except.

Q. In the two days you visited there, all he wanted to know was how the family was, is that it? A. And different things.

Q. Different things did not include anything I asked you?

Mr. Talley: I object to the question, to the form of the question. It is already answered very fully.

9393

The Court: Objection overruled.

Mr. Talley: Exception.

A. No.

Q. Before your brother left town did he tell you he was going to Chicago?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled

9394

Sidney Weiss—For Defts.—Cross

Mr. Talley: Exception.

A. No, sir.

Q. Do you know people by the name of Unger?

A. Yes, sir.

Q. Where is the Unger apartment? A. Now?

Q. Where is it now? A. I don't know.

Q. Where was it when you knew the Ungers?

A. 101st Street, Manhattan.

9395

Q. Were you up there with Yiddle Lorber, weren't you? A. I was there; I don't know who I was with.

Q. Let us see if I cannot refresh your recollection. I am talking about the year 1940, before Mendy went west, you understand? A. Yes, sir.

Q. Weren't you up to the Unger flat with Yiddle Lorber before Mendy went west? A. I don't remember. I don't remember who I was with. I know I was there.

Q. Do you remember whether Mendy and Blanche were up there when you were up there? A. Yes, sir.

9396

Q. Didn't Mendy say he was going to Chicago? A. No, sir.

Q. In the Unger flat? A. No, sir.

Q. When was it you were in the Unger flat with Mendy and Blanche? A. Some time in 1940.

Q. Was it some time in April? A. It could be April.

Q. Could it have been some time in May, having in mind when the newspapers mentioned the name of Allie Tannenbaum?

Mr. Talley: I object to the form of the

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9397

question on the ground it is incompetent, immaterial and irrelevant.

The Court: Sustained as conjectural.

Q. I will revise it. Was it sometime in May when the newspapers were mentioning the name of Tannenbaum as a prospective O'Dwyer witness?

Mr. Talley: Same objection.

The Court: Objection overruled.

Mr. Talley: Exception.

9398

~~A. I don't know.~~

Q. Didn't your brother tell you he had to leave town the minute word got to him that it looked like Allie Tannenbaum might open up?

A. No, sir.

Mr. Talley: Objected to as incompetent, immaterial and irrelevant. That is nothing reflecting on the character of this witness. I can understand something to impeach on cross-examination a witness, but he is not seeking to impeach this witness by reason of association or anything else. He is on very dangerous ground in trying to extract from this witness information.

9399

The Court: It opens up a right to inquire as to whether or not this witness had, under Section 2 of the Penal Law, knowledge, as having a bearing upon his credibility; because, logically, if he is guilty of a crime under Section 2 of the Penal Law in secreting what he believed

9400

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to be or was informed to be a criminal—the language of the statute is quite extensive—then it would be within the province of the jury to say, provided they find themselves justified in finding such to be the fact, would the same motive tend to cause this witness to give false testimony as to an alibi?

Mr. Talley: That is pretty far-fetched, your Honor.

9401

The Court: Maybe it is and maybe it is not, but I am telling you so you will understand the ruling.

Mr. Talley: I except to your Honor's ruling, and I except to your Honor's comment in connection with that ruling.

Q. Do you know Dorothy Walker? A. No, sir.

Mr. Talley: I make the same objection, incompetent, immaterial and irrelevant, improper cross-examination.

9402

The Court: Objection overruled.

Mr. Talley: Exception.

Q. Did you ever see your brother in Chicago?
A. No, sir.

Q. Did you ever communicate with Mendy Weiss while he was in Chicago during the year 1940?

Mr. Talley: I make the same objection.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

Q. You said that your brother, when you went out to Kansas City, Missouri, spoke to you about the family, as to how they were, and other things, do you remember that? A. Yes, sir.

Q. In the two days you were there what were the other things he spoke to you about?

Mr. Talley: Objected to as calling for a conclusion.

The Court: Objection overruled.

Mr. Talley: Exception.

A. He said he went away because he was afraid some witnesses were going to frame him on a Federal charge.

Q. He said he thought some witnesses were framing him on a Federal charge? A. Yes, sir.

Q. And that was why he was living under the name of Bell? A. I guess so.

Q. Did you know that your brother had a money belt on his person with \$3,000 in cash?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant, not proper cross-examination.

Mr. Turkus: When you were there.

Mr. Talley: Just a moment. Let me object.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

Q. Did you know your brother had a belt buckle, a gold belt buckle with a diamond emblem on it in the shape of a six-pointed star?

9406

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Mr. Talley: I object. It assumes something that is not in evidence. It may have been glass so far as the testimony shows. It might have been from Woolworth's. It is highly improper.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

9407

Q. You did see a diamond belt buckle? - A. No, sir.

Q. Did you see a big ring he had on his finger?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant, meaning nothing exactly; you can buy a ring for a quarter.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

9408

Q. Did you ask your brother how he was earning his livelihood while staying in Kansas City, Missouri, keeping away from that Federal frame-up?

Mr. Talley: I object to the form of the question.

The Court: Overruled.

Mr. Talley: Exception.

A. No, sir.

Q. Did you ask him where he was getting the money from to stay in hiding on a Federal frameup?

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9409

Mr. Talley: I make the same objection.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

Q. Did you ask him if he had any money to defray expenses?

Mr. Talley: Objected to.

The Court: Overruled.

Mr. Talley: Exception.

9410

A. No, sir.

Q. Did you bring him any money out? A. No, sir.

Q. Not one dollar? A. No, sir.

Q. Did you ask him if he had enough money to buy a meal and eat it?

Mr. Talley: I object to the form of the question.

The Court: Objection overruled.

Mr. Talley: Exception.

9411

A. I did not ask him that.

Q. Did you ask him if you could help him in connection with this alleged Federal frameup that he was worrying about?

Mr. Talley: I make the same objection.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

Q. When your brother told you he was worried about a Federal frameup, and he was living

9412

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under an assumed name, did you offer to do anything to help him?

Mr. Talley: I make the same objection. It calls for a conclusion.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

9413

Q. Did you go to the United States District Attorney in Kansas City, Missouri? A. No, sir.

Mr. Talley: Objected to as improper cross-examination, incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

Q. Did you go to the head of the United States Government agency in charge of investigation?

Mr. Talley: I make the same objection.

The Court: Objection overruled.

9414

Mr. Talley: Exception.

A. No, sir.

Q. Did you appeal to the Attorney General of United States?

Mr. Talley: I make the same objection.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

Q. Did you appeal to any Government agency or any Government official to help your brother

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9415

in connection with this frameup that some Federal office was trying to put over on him?

Mr. Talley: I object. There was nothing said as to a Federal office.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

Mr. Talley: There is nothing in the testimony about a Federal office. The question is highly improper. The witness said there were some witnesses that he was afraid were going to frame him up. He said "witnesses."

9416

The Court: That is right.

Mr. Talley: Does your Honor sustain my objection to that question?

The Court: Yes, on that ground. Strike out the answer.

Q. Did you appeal to any Government agency or any Government official to help your brother in connection with this alleged Federal frameup by some witnesses?

9417

Mr. Talley: I object again; that is not a Federal frameup.

Mr. Turkus: A frameup on a Federal charge.

The Court: You had better reframe your question.

Q. Did you appeal to any United States official or agency to help your brother in connection

9418

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with an alleged frameup of witnesses against him on some Federal matter?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

9419

Q. Did you advise or counsel your brother as to what he should do under the circumstances where there were some witnesses who were trying to frame him on a Federal matter?

Mr. Talley: Objected to on the same ground.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

Q. Did you advise and counsel your brother to, himself, go to some Federal agency in connection with the alleged frameup?

9420

Mr. Talley: I make the same objection, already answered.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

Q. Did you counsel and advise your brother to appeal to some person in connection with the Federal Government, or some agency thereof in connection with this alleged frameup?

Mr. Talley: I object to that on the same ground.

Sidney Weiss—For Defts.—Cross

9421

The Court: You have been sufficiently over that situation.

Q. Did you appeal to your brother to surrender himself at once?

Mr. Talley: I make the same objection.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

9422

Q. Did you counsel your brother to remain in hiding under an assumed name?

Mr. Talley: Objected to.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

Q. Well, when your brother told you about this alleged frameup of witnesses in conjunction with the Federal matter, what advice did you give your brother?

9423

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No advice.

Q. Now, what other things besides the alleged frameup of witnesses in the Federal matter did your brother Mendy Weiss speak to you about on the occasion of your first two-day visit to Kansas City?

9424

Sidney Weiss—For Defts.—Cross

Mr. Talley: I object to the form of the question.

The Court: Objection overruled.

Mr. Talley: Exception.

A. He said he was looking for some kind of a business to go into.

Q. What kind of a business did he say? A. He did not say.

9425

Q. What else did he say about business? Did he say how much he wanted to invest? A. No, sir.

Q. Did he discuss the nature of the business? A. No, sir.

Mr. Talley: I make the same objection.

The Court: Objection overruled.

Mr. Talley: Exception.

9426

Q. When he told you that he was looking for some business to go into, was that before he told you about the alleged frameup by witnesses in the Federal matter or afterwards? A. I don't know.

Q. But it was during the conversation? A. Yes, sir.

Q. When he said he was looking for a business to go into, didn't you remind him of this frameup of witnesses?

Mr. Talley: Objected to as improper cross-examination.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

Sidney Weiss—For Defts.—Cross

9427

Q. Did he state with whom he was going to go into business?

Mr. Talley: I make the same objection.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

Q. Did he say he was going to go into some business to keep up the false front of "Jim Bell", to aid him in concealing himself?

9428

Mr. Talley: Objected to as improper in form.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

Mr. Talley: I also object on the ground it is incompetent, immaterial and irrelevant.

The Court: Same ruling.

9429

Q. Did he tell you he had put \$500 into the Chihuahua Tungsten Corporation to get the vice-presidency, to aid him in keeping up the disguise of "Jim Bell"? A. No, sir, he said he invested some money in a mine.

Q. He did not say he put \$500 in it to get the vice-presidency? A. No, sir.

Q. Was that the business that he spoke to you about investing money in when you were first in Kansas City? A. No, sir.

9430

Sidney Weiss—For Defts.—Cross

Q. Was it some other business he discussed getting into? A. Yes, sir.

Q. Do you remember any of the details of that discussion? A. He said he was looking to get into some business that is good.

Q. Did you ask him what kind of a business it was? A. He said he was looking for a business to go into.

9431

Q. After the two-day visit in Kansas City you came back home with knowledge that your brother, Mendy Weiss, was afraid there were some witnesses trying to frame him on a Federal matter; is that correct? A. Yes, sir.

Q. He had told you that? A. Yes, sir.

Q. After you got back to New York City did you attend at a law office of any lawyer? A. No, sir.

Mr. Talley: Objected to as improper; incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

9432

Q. Did you go to any Federal or State agency?

Mr. Talley: Same objection.

The Court: Overruled.

Mr. Talley: Exception.

A. No, sir.

Q. Did you go to any Federal or State prosecutor?

Mr. Talley: Same objection.

Staney Weiss—For Defts.—Cross

9433

The Court: Overruled.

Mr. Talley: Exception.

A. No, sir.

Q. Did you go anywhere or do anything in reference to the facts your brother disclosed to you, about the alleged frameup of witnesses in a Federal matter?

Mr. Talley: I make the same objection.

9434

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

Q. Did you send your brother any money after you heard he was afraid of a frame-up by witnesses in a Federal matter?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

9435

A. No, sir.

Q. Did you send him any advice, either by money, telephone calls, telegraph, or any other way?

Mr. Talley: Same objection.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

Q. The second visit you made to Kansas City, was that a social visit?

9436

Sidney Weiss—For Defts.—Cross

Mr. Talley: Objected to as already gone over in detail; incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I went to see him.

Q. Did you go to see him socially? A. Yes, sir.

9437

Q. Did you bring any money out with you? A. No, sir.

Q. Did you bring any information about the alleged frameup by witnesses in the Federal matter?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

9438

Q. Did you bring him any information about the progress of the O'Dwyer investigation? A. No, sir.

Q. When you got out there did you ask your brother how he was feeling? A. Yes, sir.

Q. Did you ask him anything else except the state of his health? A. He wanted to know how the family was, mother and brothers and everybody.

Q. He wanted to know how the family was? A. Yes, sir.

Q. Did you ask him why he did not communicate with the family?

Sidney Weiss—For Defts.—Cross

9439

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

Q. Did you tell him how the family was? A. Yes, sir.

Q. Did he want to know anything else from you? A. No, sir.

Q. You spent two days on that trip, too? A. Yes, sir.

9440

Q. On the occasion of this second trip did you ask him whether he was still worrying about the witnesses framing him up in this Federal matter? A. No, sir.

Q. How far apart were these two trips?

Mr. Cuff: I object to that as having already been gone over.

The Court: What year?

Mr. Turkus: 1940, and one in 1941. I want to know how far apart the two trips were.

9441

Mr. Cuff: I object to that as having been already gone over and answered.

Mr. Turkus: Tell me the answer and I will withdraw it.

The Witness: One was in October.

Q. When was the other one? A. Toward the end of the year.

By the Court:

Q. You mean December? A. December or January.

9442

Sidney Weiss—For Defts.—Cross

Q. When was the first? A. October.

Q. The first was October, and the second when? A. Some time in December or January.

Q. When was the third one? A. In April.

Q. These were all social, purely social visits? A. Yes, sir.

Q. Did you go by aeroplane each time? A. By train, too.

Q. How many times did you fly? A. Once.

Q. Once you flew, then you drove the car back, and the rest of the time you went by train? A. Yes, sir.

Q. What line did you go by? A. At the Penn Station.

Q. You mean the train to Chicago and then you went by the Santa Fe from there? A. The Penn to St. Louis and then I had to take a different train; I changed to Kansas City.

Q. That is the Union Station? A. Yes, sir.

By Mr. Turkus:

9444

Q. On the occasion of the second trip out, did you bring any money out with you? A. No, sir.

Q. Did you bring any jewelry out with you? A. No, sir.

Q. Did you bring anything that could be readily converted into cash with you? A. No, sir.

Q. When you got there on the second trip, other than speaking about the health of the various members of the family, did your brother speak to you about anything else?

Mr. Talley: Objected to.

The Court: Objection overruled.

Sidney Weiss—For Defts.—Cross

9445

Mr. Talley: Exception.

A. Just in general.

Q. Just in general. Did he mention anything about witnesses who were allegedly trying to frame him on a Federal matter? A. No, sir.

Q. Was that subject ever brought up by either one of you on the second visit? A. I don't remember.

Q. Think, you may, see if you can remember.

Mr. Talley: I object to the form of the question and to admonishing the witness, which is highly improper in the form of a question to this witness.

9446

The Court: It occurs to me that time would be saved instead of taking each one separately, to ask him about any visit when that was discussed.

By the Court:

Q. Did you ever discuss with him that subject?

A. No, sir.

9447

Q. Did you ever ask him for the particulars?

A. No, sir.

By Mr. Turkus:

Q. Did you ever ask him any of the details?

A. No, sir.

Q. Or did you ever offer to help him by seeing a lawyer, or seeing the witnesses and trying to fix things up? A. No, sir.

Q. You got nothing beyond that? A. No, sir.

9448

Sidney Weiss—For Defts.—Cross

Q. And you say all these visits, these three visits within approximately six months, were purely social? A. I only seen him twice.

Q. Once you went there and he was not there?

A. No, he was arrested.

Q. Once you went there after he had been arrested? A. Yes, sir.

Q. That was a social visit, too? A. I went to take his wife home.

9449

Q. You went to bring his wife home after he was arrested? A. Yes.

Q. Are you older or younger than Mendy? A. Younger.

Q. Where were you born? A. New York City.

Q. Do you know where Mendy was born? A. In New York City.

Q. Do you know how old he is? A. Around thirty-five, I think.

The Court: You have the birth certificate with you, Mr. Cuff?

9450

Mr. Talley: We have it in court; if the District Attorney wants to see it we will allow him to see it.

Mr. Turkus: I would like to see it.

Mr. Talley: Counsel hands District Attorney certificate, copy of birth certificate of Stanley Weiss.

Mr. Turkus: I meant Mendy Weiss.

The Court: I inquired as to that. I wondered if there had been a check-up on the birthday.

Mr. Talley: This is a check-up on the birthday.

Mr. Turkus: We probably misunderstood one another.

Mr. Talley: I did not misunderstand

Sidney Weiss—For Defts.—Cross

9451

the Court. The Court was asking about the birth certificate. I have that.

The Court: Counsel, do not try to get the Court in bad before the jury. I asked him if he had here a record of the birth.

Mr. Talley: Whose birth?

The Court: And you said you have it.

Mr. Talley: I have it.

The Court: You know perfectly well you have a right to put it in, but you are not going to pass the buck to the Judge. We will now take a recess until 10:00 o'clock tomorrow morning.

9452

Mr. Talley: Just a minute, if your Honor please—

The Court (Addressing the jury): Gentlemen, do not discuss the case nor let anyone talk to you about it. Keep your minds open. Remember the other admonitions given you by the Court.

Mr. Talley: May counsel make application before you dismiss the jury?

The Court: No.

Mr. Talley: Exception.

9453

(Jury retired from the court room.)

Mr. Talley: I wish to address your Honor before the defendants are remanded. I think counsel join with me in an application to your Honor not to compel us to come to court tomorrow, Saturday. There is no doubt, apparently, that this case will be concluded during this coming week. By not sitting tomorrow it will enable us to go over the record.

9454

Sidney Weiss—For Defts.—Cross

The Court: The Judge is very, very easy, easier than I have been in any other case I ever tried. I have indulged counsel. The defendants are remanded.

(Adjournment was thereupon taken to Saturday, November 22, 1941, at 10:00 A. M.)

9455

Brooklyn, N. Y., November 22, 1941.

(TRIAL RESUMED)

SIDNEY WEISS, resumed the stand and testified further, as follows:

Cross-examination by Mr. Turkus (continued):

Q. How did you learn Mendy's address in Kansas City when you went out to see him?
A. He sent me a letter.

9456

Q. Did the letter have his address in it? A.
Yes, sir.

Q. Didn't it have some person to contact? A.
No, sir.

Q. It did not have Benny Portman to contact, or Rainey to contact? A. No, sir.

Q. Or Fay Dilley? A. I did not know her.

Q. It had the name of James W. Bell and the address in it? A. The name and address.

Q. How was the letter signed?

Mr. Talley: I object to that as being incompetent, immaterial and irrelevant.

Sidney Weiss—For Defts.—Cross

9457

The Court: Objection overruled.

Mr. Talley: Exception.

A. I don't remember.

Q. Did it have "Mendy" on it? A. I just don't remember.

Q. How did you know the letter was from Mendy? A. Well, I got the letter from him; I do not know the details of the letter.

Q. How did you know the letter was from Mendy, don't you understand that? A. He put his name in.

9458

Q. What name? A. I just don't remember.

Q. You say that it had "Bell" and the address? A. I did not say— He had the name and address, I said.

Q. And from the name "Bell" and the address, you knew it was Mendy? A. I don't know the details of the letter.

Q. Now, let us go back to March of 1940. In March of 1940, did Mendy Weiss tell you he was brought into the District Attorney's office in Brooklyn?

9459

Mr. Talley: I object. That is a direct effort to try to elicit testimony he is not entitled to. It is pretty dangerous for the District Attorney to do that, if your Honor wants to know what is in my mind.

The Court: I want to think about it. Yesterday we had that. Up to yesterday morning there was not a particle of evidence of flight and hiding by Weiss, prior to last summer. Are you going to a date before that? In the cross examination

9460

Sidney Weiss—For Defts.—Cross

yesterday of this witness it was brought out, as far back as 1938, Weiss was living in Brooklyn under the name of Hoffman. Later on, in the same year, he lived in Brooklyn under a still different name. But there is nothing to indicate that that has any specific relation to the Rosen case. Now—and follow me closely—ordinarily, if a crime is committed and the person thereafter flees and hides, you do not have to prove what was in the person's mind. In the absence of any other evidence, there may be a presumption that flight and hiding has relation to the crime. Therefore, the inference to be drawn from flight and hiding applies, so the jury may, in its discretion, apply it. Here, you have a different situation. The record indicates that there may have been more than one motive for flight and hiding. You cannot nail it down to the Rosen case, in view of that evidence.

9461

9462

Mr. Turkus: That is not the theory under which I am propounding the question.

The Court: Pardon me. Because, when the act is purely circumstantial it is capable of interpretation on two hypotheses. So far as the specific motivation is concerned, the defendant is entitled to the benefit of the innocent hypothesis. Have you followed me?

Mr. Turkus: Yes.

The Court: I think you are treading on dangerous ground.

Mr. Turkus: May I disclose to your Honor what I am driving at? I am coming to the point of credibility on the fabrication of evidence. I intend to show this was a fabricated alibi made as far back as 1936. I want to show other fabrications by this witness. I want to show his efforts to destroy the People's case by interfering with other witnesses. This is going to his credibility.

Mr. Talley: I object to the statement of the District Attorney and ask you to instruct the jury to disregard it.

9464

Mr. Turkus: What the District Attorney says is not evidence. That is what I mean to prove.

Mr. Talley: That is what you are trying to prove and that I am trying to prevent you from proving. You are trying to get the jury to see that now by your making the statement.

The Court: What has been said by the District Attorney that he intends to prove is not evidence. You will completely disregard it. There is not a particle of evidence in the case that Weiss, in connection with the Rosen murder, was sought at the time you mentioned.

9465

Mr. Turkus: I have stated my theory, which I intend to prove through his own lips.

Mr. Talley: He cannot prove credibility by these series of questions.

Mr. Turkus: Doesn't that affect the credibility of a witness if he fabricates

9466

Sidney Weiss—For Defts.—Cross

evidence, if he helps to build up a false and fictitious alibi at the time the crime was committed?

The Court: Do not argue this any further. Repeat the question.

(Question read by reporter, as follows: Did Mendy Weiss tell you he was brought into the District Attorney's office in Brooklyn?)

The Court: Objection sustained.

9467

By Mr. Turkus:

Q. In or about the end of March, 1940, did your brother Mendy Weiss tell you that he told the District Attorney of Brooklyn that he lived at number 10 Monroe Street, New York City, your house?

9468

Mr. Talley: I object. He has no right to elicit that testimony. This is an endeavor through this witness to elicit a statement made by the defendant which he is not entitled to have before this jury. The objection is based generally upon the ground it is incompetent, irrelevant and immaterial.

Mr. Turkus: This is a preliminary question.

The Court: The trouble is, it looks to me really an attempt to get something before the jury that, by means of an answer to the question—

Mr. Turkus: I am going to call detectives who brought him in, in rebuttal.

Sidney Weiss—For Defts.—Cross

9469

The Court: That is a different proposition.

Mr. Turkus: I want to show efforts of this witness to fabricate in this case and to collude with his brother—I want to show it through his lips. This goes to his credibility, if that is the fact.

The Court: Please, I want no more discussion about this. Anything in March of 1940 was prior to the time, so far as the record discloses, Weiss was being sought in connection with the Rosen case, or was even under adequate suspicion.

9470

Mr. Turkus: That is not the theory. Am I precluded from pursuing that line?

The Court: It will only confuse the issue. I have to rule in the same way against you as against the defendants. Only yesterday morning I excluded evidence from Major Kleinman on that point, which tended to lead up to the same nature of confusion. This is a complicated case. There are a great many ramifications. It is hard for the expert mind to follow. You must not confuse it before the jury or we will have a confused verdict. The objection is sustained.

9471

I will add this, for clarification. The only reason that the Court has permitted the evidence of living under an assumed name prior to the summer of 1940 is as having a bearing upon this witness' credibility.

Mr. Turkus: That is right.

9472

Sidney Weiss—For Defts.—Cross

The Court: But it must not be prejudicial to Weiss.

Mr. Turkus: Naturally, everything is on the theory of this witness' credibility, who comes here and speaks of a 1936 alibi.

The Court: All right.

Mr. Turkus: I will not proceed on that line as the Court has ruled it out.

By Mr. Turkus:

9473

Q. Mr. Unger, whose apartment you visited, that was at number 3 East 101st Street, Manhattan? A. It was 101st Street.

Q. Do you remember the address, number 3 East 101st Street? A. I remember 101st Street.

Q. And what other street? A. East of Fifth Avenue.

Q. Right off Fifth Avenue, wasn't it? A. I said east of Fifth Avenue.

Q. Now, did you visit Unger before that in the Trenton State Prison?

9474

Mr. Talley: I object to that as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

Q. You knew that Unger was a jail bird and an ex-convict when you visited him at 101st Street, didn't you?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant. I also object to the form of the question.

Sidney Weiss—For Defts.—Cross

9475

The Court: Objection overruled. Leave out "jail bird", call him "ex-convict". Be polite.

Mr. Talley: Exception.

A. Yes, sir.

Q. You knew that? A. Yes, sir.

Q. You saw Yiddle Lorber up there, didn't you? A. I don't know.

Q. Let me remind you, wasn't Yiddle Lorber up there, with Al Engelson and your other brother, Chick Weiss, and Sidney Weiss, yourself?

9476

Mr. Talley: Objected to as incompetent, immaterial and irrelevant, tending to prejudice this jury.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I don't remember Weiss being there.

Q. You know Al Lorber, don't you? A. Abie Lorber.

Q. The fellow that you called Yiddle Lorber, you knew him? A. Yes, sir.

9477

Q. How long did you know him? A. All my life.

Q. You knew him as a fixer, didn't you?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No.

9478

Sidney Weiss—For Defts.—Cross

Q. Didn't you know he was a hanger-out around courts and also a fixer?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. He was in the bonding business, I know.

Q. He was in the narcotic business, too, wasn't he?

9479

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: If the witness knows.

A. Not as far as I know.

Q. You knew him all your life? A. Yes, sir.

Q. You know he has been convicted for narcotics, in a narcotic case, don't you?

9480

Mr. Talley: What possible bearing has that upon the issue we are trying here? Somebody who is not in the case at all, as far as I have been able to ascertain.

The Court: The question is whether at the time of association he knew it. You used present tense.

Q. Didn't you know at the time you were at East 101st Street, in Unger's apartment, that Abie, or Yiddle Lorber was mixed up in the narcotic traffic?

Mr. Talley: I object.

The Court: He says he does not remem-

Sidney Weiss—For Defts.—Cross

9481

ber if Lorber was there. Sustained. But he can say at the time of general association whether he knew it.

Q. At the time you were up at East 101st Street did Mendy Weiss live at 4520-12th Avenue? A. I know he lived on 12th Avenue and 46th Street; I do not remember the address.

Q. Let us see if I can refresh your recollection. Wasn't there a deal made in Unger's apartment that Mendy Weiss' furniture be moved out of 4520-12th Avenue by a furniture man named Kelly?

9482

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I never heard of it.

Q. Wasn't it arranged that Blanche, his wife, was to go and move in with Rose Simons?

Mr. Talley: I object to the form of the question.

9483

The Court: The form could be the subject of revision.

Mr. Turkus: The question is, if he knows. I withdraw it.

Q. In your presence, and with you as part of the conversation and the conspiracy, wasn't it arranged that Blanche was to move it with Rose Simons?

9484

Sidney Weiss—For Defts.—Cross

Mr. Talley: I object to the form of the question.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

Q. Who was Rose Simons? A. Blanche's sister.

9485

Q. After the meeting in Unger's house, didn't Blanche, to your knowledge, move in with her sister Rose Simons on the west side of Manhattan, at an 84th Street address?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. There was no such meeting; I don't know what you are talking about. There was no such meeting. I went to see him at 101st Street, that is all. There was no such meeting that you are talking about.

9486

Q. After your visit at Unger's flat on East 101st Street, isn't it a fact that Blanche moved in with her sister, Rose Simons, on the west side of Manhattan, at the 84th Street address?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I don't know.

Q. Isn't that a fact that after you visited

Unger's flat at number 3 East 101st Street that Mendy Weiss went out to Chicago and left his wife here in New York City?

Mr. Talley: I object. He is trying to tie up two things together that have no relation.

The Court: How would he know that Mendy went to Chicago?

Mr. Turkus: I am asking him if he knows it. He can say if he does not know. 9488

The Court: You mean after he heard of it?

Mr. Turkus: I will go further than that.

The Court: If he had first hand knowledge of it?

Q. Wasn't there a deal made in the Unger flat between you and your brother Mendy Weiss, Yiddle Lorber and Unger, that your sister-in-law Blanche was to move in with her sister on the west side of Manhattan, and that Mendy Weiss was to go out west? 9489

Mr. Talley: I object to that as already answered, and as incompetent, immaterial and irrelevant.

By the Court:

Q. Were you there? A. I was there, but there was no such party there. I don't know

9490

Sidney Weiss—For Defts.—Cross

what the District Attorney is trying to bring out.

By Mr. Turkus:

Q. Were you there in April of 1940? A. I was there in 1940, but what the month is, I don't remember.

Q. In relation to the time that Mendy Weiss went west, when were you in the Unger flat?

9491

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I was there in 1940, but what month I do not remember.

Q. In relation to the time that you went out by train to Kansas City, Missouri, when was the meeting in George Unger's flat?

9492

Mr. Talley: I make the same objection.

The Court: Objection overruled.

Mr. Talley: I also object to the form of the question.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I said there was no such meeting. I don't know of any such meeting.

Q. In relation to your visit at the Unger flat, when was it you went out to Kansas City, Missouri, to see your brother?

Sidney Weiss—For Defts.—Cross

9493

Mr. Talley: I object to that on the same ground.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I don't understand the question.

Q. Don't you understand the question—How long after that meeting was your visit? A. I am telling you there was no such visit at all.

Q. How long after your visit to the Unger flat at number 3 East 101st Street, or on East 101st Street, east of Fifth Avenue, was it that you went out to see your brother Mendy Weiss in Kansas City? A. I don't know how long.

9494

Q. How long after the meeting—Question withdrawn.

Q. How long after your visit to the Unger flat on East 101st Street was it that you received a letter from Mendy Weiss, a letter which brought you out to Kansas City? A. I don't remember.

By the Court:

9495

Q. I think you told us it was in October? A. October, yes, sir.

Q. You made your first visit? A. Yes, sir.

Q. To Kansas City? A. Yes, sir.

Q. You told us it was in the summer preceding October that you received a letter from Mendy? A. Before I made the trip.

Q. Some time in the summer? A. Yes, sir.

Q. Not in the fall? A. No, sir.

9496

Sidney Weiss—For Defts.—Cross

By Mr. Turkus:

Q. Did your brother Mendy Weiss, in the early part of 1940, come to you and ask you to state falsely that he was living with you and working with you in jute boxes and pin ball machines?

9497

Mr. Talley: I object to that as trying to elicit testimony he is not entitled to elicit, and as incompetent, immaterial and irrelevant.

Mr. Turkus: I will withdraw it in that form.

Q. Did you agree with any one to falsely testify and state that your brother Mendy Weiss was living with you at number 10 Monroe Street, New York City, and was engaged with you in jute boxes and the pin ball machine business? A. No, sir.

9498

Q. Now, do you know a man named Frankie, in relation to your jute boxes and pin ball machines?

Mr. Talley: I object to the form of the question.

The Court: Objection overruled.

Mr. Talley: Exception.

A. Yes, sir.

Q. What is Frankie's last name? A. Schneider.

Q. Where does Frankie live? A. In the Bronx.

Q. What address? A. I don't know.

Q. What is Frankie in relation to your jute boxes and pir ball business? A. He works for me.

Q. Isn't he a partner? A. No, sir.

Q. Is he about thirty-two years old? A. He is somewheres around that.

Q. Is he about five feet, six, or five feet, seven? A. A little taller.

Q. Does he weigh about 150 pounds? A. I don't know.

9500

Q. How long has Frankie been working with you? A. About five years.

Q. Is he smooth-shaven? A. I don't understand what you mean.

Q. Has he a mustache? A. No, sir.

Q. Has he a beard? A. No, sir.

Q. Is he smooth-shaven, without hair on his face? A. Yes.

Q. Has he sandy hair? A. No.

Q. What color hair has he got? A. It looks like black to me.

Q. Has he gray eyes? A. I don't know; I never looked into his eyes.

9501

Q. Let us see about Frankie. Wasn't Frankie with you in the narcotics business? A. Mr. Turkus, I was never in the narcotic business.

Q. You were not in Kansas City making contact with John Jay, out there, for narcotics?

Mr. Talley: I object to that as too far afield. Are you going to let the District Attorney go on like this?

A. No, sir.

9502

Sidney Weiss—For Defts.—Cross

The Court: The witness has answered.

Q. Did you meet John Jay out in Missouri?

A. No, sir.

Q. Well, didn't you meet him when he was introducing Mendy as one of his relatives? A. I did not even know him.

Q. Didn't you have a piece of a crap game at Norfolk off Delancey Street four years ago?

9503

Mr. Talley: Objected to as incompetent, immaterial and irrelevant, too remote.

The Court: There is no moral turpitude in play crap.

Mr. Turkus: There is no moral turpitude in it but there is the law against gambling, play crap is gambling.

The Court: The Court does not know what you mean by "piece".

Mr. Turkus: I withdraw the question in that form.

9504

Q. Weren't you, in violation of the law of the State of New York, operating a crap game at Norfolk off Delancey Street, where you were taking a cut from the players?

Mr. Talley: Objected to as calling for a conclusion; incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

Q. Didn't you have an interest, a financial interest in a bar and grill at Lewis and Grand Streets, known as the Lewis Bar and Grill, which was a hangout for gangsters?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant, simply intended to prejudice the jury against this defendant.

The Court: It contains two propositions. Objection sustained.

9506

Q. Didn't you have a financial interest in a bar and grill and Lewis and Grand Streets, known as the Lewis Bar and Grill?

Mr. Talley: Objected to as immaterial, incompetent and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

Q. Was the Lewis Bar and Grill one of your hangouts?

9507

Mr. Talley: Objected to as immaterial.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

Q. How many times have you gone into the Lewis Bar and Grill?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant. It is not affecting this man's credibility. It does

9508

Sidney Weiss—For Defts.—Cross

not do anything at all except to belound
the issue in this case.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I don't remember.

Q. More than ten? A. I don't know.

Q. More than twenty? A. I don't know.

Mr. Talley: I object to that.

The Court: Objection overruled.

Mr. Talley: Exception.

9509

Q. More than a hundred? A. I don't know.

Mr. Talley: Objected to.

The Court: Objection overruled.

Mr. Talley: Exception.

Q. More than two hundred?

Mr. Talley: Objected to.

The Court: Objection overruled.

Mr. Talley: I must have an exception
in each case.

9510

A. I don't know.

Q. Well, when you heard the District Attorney
say in the first part of that double question that
that was a hangout for gangsters, did that cause
you to know how many times you were in there?

Mr. Talley: I object to the question as
improper.

The Court: Objection sustained.

Sidney Weiss—For Defts.—Cross

9511

Q. Can you estimate whether you have been in the Lewis Bar and Grill five hundred times?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant; already answered.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

Q. How long do you know Schlermer Katz?

A. I know him about eight years.

9512

Q. In the eight years you have known him, how many times have you been out in his company?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. Never in his company.

Q. Were you ever in the company of others who were with Schlermer?

9513

Mr. Talley: I make the same objection.

The Court: You mean with Schlermer as a member of a group?

Mr. Turkus: Schlermer was a "finger man".

Mr. Talley: If your Honor please, you see how improper and how persistent the efforts of this District Attorney are in trying to get something before the jury. I move for the withdrawal of a juror,—I think this is the first time I have made

9514

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this application,—and for a mistrial, upon the ground that the District Attorney has persistently made statements that your Honor has ruled against him in connection with evidence he is trying to elicit, with the attempt to prejudice this jury against these defendants. And the persistence with which that is done makes it impossible for this defendant to get a fair trial—in view of the statements of that kind deliberately and persistently made by the District Attorney.

9515

The Court: The motion is denied.

Mr. Talley: Exception.

Mr. Turkus: Will you look at the testimony of Berger?

9516

The Court: The evidence on that point is specific as to an alleged talk between Berger and Weiss at Clinton and Broome in relation to Rubin,—that he wanted the witness Berger to point out Rubin to Schlermer, to be “hit.” Schlermer’s real name was Katz. It was not Sam Katz. That Weiss then said he would have Schlermer get in touch with him. Then there was a meeting with Schlermer at Stanton and Cannon, and Schlermer said that Weiss wanted him, Schlermer, to see the witness Berger. Now, that does not make Schlermer the finger man. As I understood, the finger man was Berger—but that may be more or less immaterial.

Mr. Talley: It is very material whether Berger, whose testimony your Honor has referred to, was the finger man or not.

Sidney Weiss—For Defts.—Cross

9517

He said he was. This question assumes anything that Berger may have said might be true, which we do not admit.

The Court: Repeat the question.

(Question read by reporter, as follows:)

Q. Were you ever in the company of others who were with Schlermer?

The Court: I will allow it.

Mr. Talley: Exception.

9518

A. No, sir.

Q. Do you know Ben (Bugs) Siegel? A. No, sir.

Q. Were you running those jute boxes and pin ball machines for yourself or for someone else?

A. Myself.

Q. Do you know Meyer Lansky, sometimes known as Jake Lansky, sometimes known as Meyer Lansky? A. No, sir.

Q. You are not operating pin balls and jute boxes for Meyer Lansky and Ben (Bugs) Siegel, are you? A. No.

9519

Q. Didn't you work for Ben (Bugs) Siegel on the pin balls?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant, too remote.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

Q. You never met Ben (Bugs) Siegel in your life? A. No, sir.

Q. Or Lansky? A. No, sir.

9520

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Q. How long do you know Hymie Siegel?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I don't know him. I see him, but I never spoke to him.

Q. Where did you see him? A. In the East Side.

9521

Q. How many years have you seen him on the East Side? A. I don't know.

Q. Why, weren't you and Hyman Siegel and Cuppie Midgen engaged in the wholesale distribution of narcotics through a dealer named Fillipo Naty?

Mr. Talley: I object to that as incompetent.

The Court: Objection overruled.

Mr. Talley: Exception.

9522

A. No, sir, Mr. Turkus, you know very well I was never in the narcotic business. You know that.

Q. Do you mean that? A. Certainly.

Q. Was your sole visit out to Kansas City, Missouri, to see Mendy socially?

Mr. Talley: Objected to as already answered and gone into at great length, mostly yesterday.

Mr. Turkus: The witness has invited me as to what I know now.

The Court: Objection overruled.

Mr. Talley: Exception.

A. Yes, sir.

Q. You have not forgotten the telephone calls you made to Kansas City, Missouri, because of any narcotic business that was out there, have you?

Mr. Talley: Objected to.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

Q. Did you ever see this person before (indicating a person who entered the court room)?

A. Yes, sir.

Q. What is her name? A. I know her name as Ruth.

Q. Is that the one you were with when she was with Cuppie and you in Texas? A. I was not in Texas, I said.

Mr. Turkus: Your name, for the record, please?

Person Addressed: Ruth Siik (spelling).

The Witness: Mr. Turkus, why don't you ask her if I was in Texas?

Mr. Turkus: I wish the law permitted me to do so.

The Witness: You know very well I was never in Texas.

Mr. Turkus: You know very well you were.

9526

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The Court: Just a minute— The remark by Mr. Turkus is stricken out. The jury is instructed to disregard it. Mr. Turkus is admonished not to do a thing like that again.

Mr. Turkus: Your Honor admonished the witness not to make a statement.

The Court: No matter what the witness says, don't you engage in any retort that may prejudice the jury.

9527

Mr. Talley: I make the same application, that your Honor instruct the jury to disregard the last remark of the District Attorney, even after your admonition to L. A.

The Court: I don't know if it amounts to anything, but I will so advise the jury.

Q. Were you told before you took the stand that on a collateral matter the District Attorney was bound by your answer? A. No, sir.

Q. Did you ever hear that expression before you took the witness chair? A. No, sir.

9528

Q. Now, that girl that was brought in here, Ruth Siik, was she Cuppie's sweetheart?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant. I don't know how that is within the knowledge of this witness.

The Court: Objection overruled.

Mr. Talley: Exception.

A. Yes, sir.

Q. You associated with Cuppie and with her?

Sidney Weiss—For Defts.—Cross

9529

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

Q. You never went out in their company together? A. No, sir.

Mr. Talley: I make the same objection.

The Court: Overruled.

Mr. Talley: Exception.

9530

Q. On or about June 5, 1941, did you, together with a man named Oscar, visit the Brownsville section of Brooklyn? A. I did not know no man named Oscar.

Q. Did you on or about June 5, 1941, visit the Brownsville section of Brooklyn?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant, "about June". It is too indefinite.

The Court: Objection overruled.

Mr. Talley: Exception.

9531

A. I visited the Brownsville neighborhood; I don't know the month it was; I was there.

Q. You have been in Brownsville many times during 1941? A. I was there quite a few.

Q. Were you there on or about the month of June, 1941, and contacted one Naty Katz?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant. I also object to the form of the question.

9532

Sidney Weiss—For Defts.—Cross

The Court: Objection overruled.

Mr. Talley: Exception.

A. I spoke to him.

Q. You know Naty Katz? A. Not before I spoke to him.

Q. Were you introduced to him? A. Yes, sir.

Q. By whom? A. By somebody in Brownsville.

Q. Who is the "somebody in Brownsville"?

9533

A. I don't remember.

Q. Why, it was just the past summer, wasn't it? A. I don't know who took me over to him. I spoke to a lot of people in Brownsville in reference to this case.

Q. Not so fast. Who else took you to Naty Katz, who was present? A. I don't remember who took me over. I spoke to lots of people.

Q. But I know—lots of people didn't take you over to Naty Katz? A. I spoke to lots of people in reference to this case.

9534

Q. Was there one person who took you over to Naty Katz, or were there lots of people? A. I don't remember.

Q. Had you ever seen Naty Katz before you were introduced to him on that occasion? A. No, sir.

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: He said no.

Mr. Talley: Exception.

Q. After you met Naty Katz on that occasion did you meet with him again? A. I guess so.

Q. Well, cannot you be a little more definite.

A. Yes, sir.

Q. When you had sought an introduction to Naty Katz, you knew he was a Brownsville hoodlum, didn't you?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant; calling for a conclusion.

A. The only reason I spoke to him was because I knew he knew people from Brownsville that knew they were framing my brother. That is why I spoke to him. I wanted to get some information.

9536

Mr. Turkus: Will your Honor admonish the witness?

By the Court:

Q. The District Attorney wants to know this, at the time you spoke to Naty Katz, you knew that he was a disreputable character? A. No, sir.

9537

Q. You did not know that? A. The only reason I went to Brownsville—

The Court: We heard what you said.

By Mr. Turkus:

Q. On the second meeting you had with Naty Katz, did you know then he was a disreputable character?

9538

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Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I did not; I never asked him; I did not know.

Q. You did not know anything about Naty Katz after the first or second meetings with him in regard to his social standing in the community?

9539

Mr. Talley: I object to that as incompetent, immaterial and irrelevant—his social standing or anybody else's has no bearing here.

The Court: Objection overruled.

The Witness: The only reason that I went to see him—

The Court: Repeat the question.

(Question repeated by stenographer, as follows: You did not know anything about Naty Katz after the first or second meetings with him in regard to his social standing in the community?)

9540

A. No, sir.

Q. Now, did you make a deal with Naty Katz to get one George Gunther to testify falsely, and when he refused it, did Naty Katz, with your approval, break his jaw?

Mr. Talley: I object.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I made no deal with nobody. All I had in mind to look for was to look for the truth. That is all.

Q. Were you present when Naty Katz attacked this George Gunther? A. You know I was not present.

Mr. Turkus: Will your Honor direct this witness to answer and desist from that?

The Court: Yes.

Mr. Talley: He has given an answer.

The Court: I am trying to get a word in edgewise. When he answers the question make no retort.

Mr. Turkus: I ask that the answer be stricken out.

The Court: Read the question and let it be answered.

(Question read by reporter, as follows: Were you present when Naty Katz attacked this George Gunther?)

A. No, sir.

Q. You were in Brownsville in the interests of justice, then, is that it? A. Yes.

Q. Did you go to Brownsville on one occasion in an automobile with two men?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant, too general.

The Court: Objection overruled.

Mr. Talley: Exception.

A. I don't remember.

Q. See if I can refresh your recollection. How

9544

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many trips to Brownsville have you made in the interests of justice? A. Lots of trips.

Q. How many is "lots of trips"? A. Many trips; I did not count them.

Q. Would you say twenty? A. I would not say nothing; I know I made many trips.

Q. Did you make one trip in an automobile with two men? A. I made lots of trips and I took along somebody with me for company.

9545

Q. Was "somebody" two men on each occasion? A. No.

Q. Do you remember one specific occasion when you went to Brownsville with two men? A. Maybe I went, I don't know.

Q. Do you remember the month of May, 1941, going with two men in an automobile to Brownsville? A. No, sir.

Mr. Talley: I object to that as too general and too indefinite. I ask that the time be fixed. The witness has a right to have his attention directed to something.

9546

The Court: You say May, 1940?

Mr. Turkus: 1941.

The Court: Objection overruled.

Mr. Talley: Exception.

A. May of this year.

Q. Did you go to Brownsville in an automobile with two men, and on a Brownsville corner meet one Harry, alias Muggsy Cohen? A. The only time I seen Muggsy Cohen—

Q. Yes or no; don't make a speech. A. That is the only way I can answer it.

Q. If you cannot answer yes or no, tell the

jury— A. (Interrupting) That is the only way I can answer that question.

Mr. Talley: I ask your Honor again to ask the District Attorney not to make a statement of that kind, threatening and bull-dozing this witness. It is contemptible. I have never, in all my experience, seen an exhibition or talk such as we have been listening to in the last day or two from this District Attorney.

Mr. Turkus: That is ridiculous.

9548

Mr. Talley: I ask your Honor to direct the District Attorney to keep within the bounds of just plain ordinary decency in the trial of this case.

Mr. Turkus: May we have summations at the proper time?

The Court: Answer the question yes or no.

The Witness: Not then, I never seen him then.

Q. Did you in an automobile see one Harry, alias Muggsy Cohen on a Brownsville corner in or about the month of May, 1941? A. Yes, sir.

9549

Q. Did you see Harry Muggsy Cohen in Brownsville any month in the year 1941? A. Yes, sir.

Q. What month was it? A. It was the Saturday before the case started.

Q. That was the first time you saw him? A. The first time I saw him.

Q. When you say, "before the case started",

9550

Sidney Weiss—For Defts.—Cross

do you mean— A. (Interrupting) September 15th.

Q. Did you say to Muggsy Cohen, "I heard that you were in the District Attorney's office"?

9551

Mr. Talley: I object to that as being purely collateral. Your Honor will recall that I was prevented from having that testimony elicited yesterday with relation to Muggsy Cohen, on the ground it was a collateral matter, and here we are going into it again. If your Honor allows this witness to testify and allows me to present my witness, I have no objection to it. I do not want to be foreclosed and allow these questions to be asked of this witness. I would like to find out all there is about Muggsy Cohen when he was in the District Attorney's office.

9552

The Court: There is so much confusion with this speech making it is difficult for me to keep the evidence together. All you have to do is to make an objection on legal grounds and try to forget there is a jury here. Just address the Court.

Mr. Talley: I cannot forget there is a jury here.

Mr. Turkus: We will have a talk.

Mr. Talley: I am listening to these improper remarks given by the District Attorney.

The Court: The jury will disregard them. The objection is overruled.

A. No, sir.

Q. Did you ask Muggsy Cohen what happened in the District Attorney's office? A. No, sir.

Q. Did you say to Muggsy Cohen, "I want you to meet me tonight and talk to a lawyer"? A. I said to him—

Q. Did you, yes or no? A. I said I would call him up. I cannot answer that question yes or no. I will tell you what I said to him.

Q. Tell me yes or no. A. That is the only way I can tell it to you.

The Court: Repeat the question.

9554

(Question repeated by reporter, as follows: Did you say to Muggsy Cohen, "I want you to meet me tonight and talk to a lawyer"?)

The Witness: All I said was I would call him Saturday and if he wanted to see my lawyer I would call him Saturday evening and I would make an appointment for eight o'clock.

By the Court:

9555

Q. To see if he would go to your lawyer?
A. Yes.

Q. Your lawyer? A. My brother's lawyer.

Q. Who was that? A. I asked him if he would see Mr. Cuff, Mr. Kleinman, or anyone.

By Mr. Turkus:

Q. Did you say to Muggsy Cohen, "I want you to meet me tonight and talk to the lawyer," yes or no? A. No, sir.

Q Did you tell Muggsy Cohen to meet you

9556

Sidney Weiss--For Defts.—Cross

at Weiner's Bar and Grill on Amboy Street near Pitkin Avenue at seven o'clock that night? A. I said I would 'phone him there.

Mr. Turkus. Will your Honor direct this witness to be responsive?

9557

The Court: He has already answered that that Saturday night he was to telephone Muggsy—was to telephone him and let him know if he would see the attorney for the defendant Weiss, not mentioning any specific name of the attorney.

Q. At seven o'clock on the night you met Mr. Cohen on a Brownsville corner did you telephone Weiner's Bar and Grill and have a talk with Muggsy Cohen? A. I never met him at seven o'clock that night.

Q. Did you at or about seven o'clock that night telephone Muggsy Cohen at Weiner's Bar and Grill? A. Yes, sir.

9558

Q. Did you tell Muggsy Cohen that you could not meet the lawyer that night and that you would call him back the next night at the same place at the same time? A. The next afternoon.

Q. So you did tell him that you could not meet the lawyer that night and you would call him back the next afternoon? A. That is right.

Q. Now, did you call back at Weiner's Bar and Grill when you said you would? A. Yes, sir.

Q. Did you adjourn or lay off the appointment for one o'clock in the afternoon two days later? A. Yes, sir.

Q. And two days later, at about one o'clock in the afternoon, did you telephone the same

bar and grill and speak to Muggsy Cohen? A. Yes, sir.

Q. Did you say to Muggsy Cohen, "I want you to come and meet me in front of number 40 Wall Street, New York; take a cab and I will pay for it"? A. I asked him if he wanted to go and see Talley—Judge Talley. He said, "Yes." I said, "Come down to 40 Wall Street." You want to know everything. I am telling you the truth.

The Court: Answer the question.

9560

Q. Answer yes or no— Did you in that talk say to Muggsy Cohen, "I want you to come and meet me in front of number 40 Wall Street, New York, take a cab and I will pay for it"? A. Part of that is right and part is wrong.

Q. What is wrong? A. I asked him if he wanted—

Q. What is wrong with the two sentences—the one that you were to meet in front of 40 Wall Street, New York, "Take a cab and I will pay for it,"—which is wrong? A. "I want you." I did not command him to come down. I asked him if he wanted to come down, and he said, "Yes." I said, "Meet me in front of 40 Wall." He said he had no money. I said, "Jump in a cab, and I will pay for it."

9561

Q. So you gave Muggsy Cohen no order? A. No, sir, I did not give him any order.

Q. It was a request? A. No request, he said he would be glad to come to the office; he said he would be very glad to come to the office.

9562

Sidney Weiss—For Defts.—Cross

Mr. Turkus: Will your Honor admonish this witness? I think he has been encouraged that he can answer the District Attorney any way he sees fit.

The Court: Proceed.

Q. Did you request Muggsy Cohen to come to 40 Wall Street? A. I asked him if he wanted to come and he said yes.

9563

Q. Yes or no? A. Yes, sir. If you want it that way, all right.

Q. I want it yes or no. A. I cannot answer you that way.

Q. You did all right on direct examination, didn't you?

Mr. Talley: I object to that and move it be stricken out.

The Court: Objection sustained. Strike it out.

9564 -

Q. Did Muggsy Cohen say to you, "Is it all right if I take a friend along with me?" A. No, sir.

Q. Did you say, "Yes, that is all right"? A. No, sir.

Q. Now, did Muggsy Cohen meet you in front of 40 Wall Street? A. Yes, sir.

Q. Did he have a man with him named Blacky? A. He had a man with him; I don't know what his name was.

Q. Was it Blacky? A. I don't know.

Q. You never met him before and have never seen him since? A. No, sir, that was the second time I saw Muggsy myself.

Q. Now, you paid for the cab? A. Yes, sir.

Q. Then did you say to Muggsy Cohen, "I think it is too early yet, Talley is out to lunch"?

A. I think so, yes, sir.

Q. Then did you say to Muggsy, "I would like to buy you a drink"? A. Yes, sir.

Q. Did Muggsy say, "I am not hungry, but I will have a drink"? A. Yes, sir.

Q. Did you walk for a couple of blocks and go into a bar and grill and have a drink? A. Yes.

Q. All of you? A. Yes, sir.

Q. That is, you, the unknown man, and Muggsy? A. Yes, sir.

9566

Q. You paid for the drinks? A. Yes, sir, one drink.

Q. One drink for three, or three drinks? A. One drink apiece.

Q. A round of drinks? A. Yes, sir.

Q. Did you walk Muggsy Cohen over to the Talley law offices? A. Yes, sir.

Q. Before going into Mr. Talley's office did you ask him, Mr. Talley, whether or not you could have a room along with Muggsy Cohen, to talk to him? A. No, sir.

Q. Did Mr. Talley say "Yes" to that? A. I didn't ask him that.

9567

Q. Did you get a room alone with Muggsy Cohen first? A. No, sir.

Q. Did you, in the room alone with Muggsy Cohen, tell him you wanted to know what happened in the D. A.'s office? A. No, sir.

Q. Did you ask him to tell you everything from the beginning, so that he could get everything straight and you could get everything straight? A. I told him to tell me the truth, that is all I asked him, just for the truth.

Q. Didn't you say to Muggsy Cohen in the

9568

Sidney Weiss—For Defts.—Cross

room along in Talley's law office to tell you everything that happened in the D. A.'s office; that you wanted to get everything from the beginning so you could get everything straight? A. No, sir.

Q. Did you, after talking alone to Muggsy Cohen, bring him into Mr. Talley's private room? A. No, sir.

9569

Q. Did you, after talking to Muggsy Cohen alone in a private room, bring him into Mr. Talley's private room and have him dictate a statement—that is, Muggsy Cohen dictate a statement—to a stenographer? A. No, sir.

Q. Was a statement taken in Mr. Talley's private room from Muggsy Cohen to a stenographer? A. Yes, sir.

Q. Was this man whose identity you do not know sitting in the outer office? A. In the waiting room.

Q. And after Muggsy Cohen's statement was taken through the stenographer, was Muggsy Cohen handed Mr. Talley's card by Mr. Talley?

9570

Mr. Talley: Listen, I haven't had a card in thirty years.

Mr. Turkus: Is that from the witness?

Mr. Talley: That was from me. I don't use cards in my business or profession. I want you to get that straight.

Mr. Turkus: I will take that answer from Judge Talley in lieu of the witness.

Mr. Talley: You had better take it. I am no ambulance chaser, handing out cards.

Mr. Turkus: We are trying a murder

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9571

case; you are not on trial for anything; don't be putting yourself in the place of your client.

Mr. Talley: Now, your Honor—

Mr. Turkus: One is in competition with the other.

The Court: I will stop this.

By Mr. Turkus:

Q. Let us go back to what happened in the office—

9572

Mr. Talley: Come back to it quickly.

Mr. Turkus: Will your Honor instruct him to stop hissing in my ear.

The Court: Both stop.

Q. What was Muggsy Cohen told by Mr. Talley—"in case you remember something you did not tell me, get in touch with me"? A. No, sir.

Q. Did the unknown man and Muggsy Cohen leave the office together? A. Yes, sir.

9573

Q. Did you take Muggsy Cohen and the unknown man, and drive Muggsy Cohen home? A. Yes, sir.

Q. Now, out in Missouri, when you were told by your brother Mendy that he was afraid witnesses were going to frame him in a Federal Court, you did nothing about it? A. That is right.

Q. Back here in New York City, you got the idea that somebody was trying to frame your brother in a murder case, is that it? A. Yes, sir.

9574

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Q. You went out in the interests of justice to help him? A. Yes, sir.

Q. Did you go to the Governor? A. No, sir.

Mr. Talley: That has been already gone into at great length.

Mr. Turkus: This is on this frame-up—Judge Talley is twisted or has forgotten the evidence.

Mr. Talley: I object to it as incompetent, immaterial and irrelevant.

9575

The Court: I think the question is frivolous. Sustained.

Q. Did you go to Judge O'Dwyer, the District Attorney of the County?

Mr. Talley: That is objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

9576

Q. Did you go to any law enforcement agency in the interests of justice?

Mr. Talley: I make the same objection, and also as to the form of the question.

The Court: That might be a normal reaction and again it might not, to go to a so-called law-enforcement agency. Most people don't know what they are or where they are located until election. The objection is sustained. The Court recognizes those only who are officially authorized to administer the law, and not self-

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appointed organizations that do not understand and tell public officials how to do their work when they don't know anything about it whatever.

Mr. Turkus: Am I precluded from going any further on that?

The Court: I think that part is too far-fetched.

Q. Other than personally going to Brownsville in the interest of justice, did you do anything about the alleged frameup? A. I spoke to people and tried to bring out the truth.

9578

Q. That you did all on your own? A. Yes, sir, sure; I wanted to find out.

Mr. Turkus: I ask that this photograph be marked for identification.

(Received and marked People's Exhibit Z-27 for identification.)

Q. I show you People's Exhibit Z-27 for identification and ask you if that is a photograph of Yonkel. A. Yes, sir.

9579

Q. Yonkel is the husband of this woman whom yesterday you called Eisenstein, is that right? A. Something like that.

Q. You called her Eisenstein yesterday, didn't you? A. Something like that.

Q. What was something like that you called her yesterday? A. What you just said.

Q. Eisenstein? A. Yes.

Q. That is a woman you know for how many years? A. A number of years.

Q. How many is the "number" that you know her? A. A number of years.

9580

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Q. Well, is it one? A. Around ten years.

Q. Nine or ten years? A. Yes, sir.

Q. Don't you know that the name furnished the District Attorney on the bill of particulars was Dorothy Isaacson, 148 Clinton Street, Borough of Manhattan, unemployed? A. No.

Q. Well, is the name Eisenstein or Isaacson? A. Isaacson.

Q. My question to you is, just refresh your recollection as to the name. A. I cannot pronounce it; I still cannot.

9581

Q. Didn't you say "Isaacson"? A. Isaacson or something like that.

Q. So that it was your inability to pronounce "Isaacson" that caused you to say Eisenstein?

The Court: Oh, don't quarrel about that.

Q. Did you ever know this Isaacson woman under the name of Levine? A. No.

Q. Did you ever know her husband, Yonkel, under the name of Levine? A. No, sir.

9582

Q. How many times have you been out with Yonkel? A. Never.

Q. Never out with Yonkel? A. No.

Q. Only out with Mrs. Isaacson, is that it? A. That is right.

Q. Did you ever know her under the name of Rosen? A. No, sir.

Q. Did you ever know her under the name of Roth? A. No, sir.

Q. Did you ever know her under the name of Greenberg? A. No, sir.

Q. Did you ever know her under the name of Mirrin?

Mr. Talley: I object to the manner in which this examination is being conducted before the jury. The District Attorney, reading ostensibly from the back of a photograph, asking this witness to identify, and underneath a yellow sheet. I think that method of examination should be stopped by your Honor. The question is objected to and the manner of examination is called to your Honor's attention. It is obvious, too—the District Attorney is standing within a foot of the jury box and endeavoring to do that—he does not look at the paper from which he is examining, but is holding it in sight of the jury.

9584

The Court: My impression would be that Mr. Turkus is quite a few feet away.

Mr. Talley: He is within one foot of the jury box.

The Court: You will have it as one on the record. The Court is not interested. Go ahead.

9585

Mr. Talley: Your Honor declines to comply with my request?

Mr. Turkus: May the record show that Mr. Turkus is facing the witness and that he is holding the picture—which I doubt is visible to the jury—face behind, although it has been identified by the witness as Yonkel, that I am reading from the back of the picture and that I have some yellow pages in my hand, which are not visible to the jury but only to me.

9586

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Mr. Talley: The top of the paper is headed "Police Department," and it is a yellow sheet.

Mr. Turkus: He cannot see that.

Mr. Talley: I can see "Police Department."

Mr. Turkus: You can, but the jury cannot.

9587

Mr. Talley: The sheet you are reading from is the well-known yellow sheet of the Police Department.

Mr. Turkus: It is familiar to Judge Talley.

Mr. Talley: It is. I have handled a thousand of them.

The Court: Please stop this colloquy. The Court did not notice it until Judge Talley spoke of it—the papers or what the papers were. Certainly the jury would not have knowledge of what those papers are if Judge Talley had not told them. Judge Talley is on the other side of Mr. Turkus, from the direction of the jury.

9588

Mr. Talley: I take exception to the refusal of my request.

The Court: You are not going to have this record distorted, if I can help it.

By Mr. Turkus:

Q. Do you know her by any other name than Isaacsen? A. No, sir.

Q. You told Mr. Talley yesterday that your 26th birthday was the only birthday you celebrated; is that right? A. That is right.

Q. Of all the birthdays in your life the 26th was the only one you celebrated? A. That is right.

Q. What was there of peculiar significance about your 26th birthday as contrasted with all the other birthdays in your life? A. I don't understand you and I told you that was the only birthday—

Q. You do not understand me and you told me. Who did you tell Judge Talley was at the 26th birthday, the only birthday in your life when you had a party? A. Who did I tell?

9590

Q. Yes. Don't you understand me? A. No, I didn't hear what you said. I am sorry.

Q. Yesterday you told Judge Talley that you only had one birthday party in your life. A. That is right.

Q. Your 26th birthday. A. That is right.

Q. And you remember about going to the moving pictures, and what time you came out, and what restaurant you ate in, the Brass Rail, and that you went to Ratner's restaurant, and that you met in Brother Sammy's automobile store, and that mother was there.

9591

Mr. Talley: I object to the form of the question, if your Honor pleases.

Q. Didn't you remember that? A. Yes.

Mr. Talley: I object to the form of the question. I ask your Honor to rule upon it.

The Court: Overruled.

Mr. Talley: Exception.

9592

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Q. On this only birthday party in your whole life, who did you say was present? A. My mother, Dottie Eisenstein, Blanche, Mendy and myself.

Q. Why, you had Sammy in there yesterday?

Mr. Cuff: I object to that.

Q. Didn't you? A. No, sir.

9593

Q. You are not leaving Sammy out on account of that picture I showed you yesterday, are you?

Mr. Talley: If your Honor please, Sammy was not put in the birthday party yesterday. If the District Attorney was familiar with his record, he would know. He is now referring to a picture that he marked for identification. That is not right, to refer to any picture that is not in evidence. The question is highly objectionable and I press my objection and I ask you to direct the District Attorney not to ask that type of question again.

9594

The Court: If I recall correctly, in his direct testimony he said that the Sam who was with him that night was his brother Sam.

Mr. Turkus: Yes, that is right.

The Court: Is that the one you mean now?

Mr. Turkus: Yes.

The Court: That is not the picture you showed him?

Mr. Turkus: No, not this picture, but yesterday I showed him a picture which

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9595

was only marked for identification, a picture which he identified as a picture of his brother Sam.

The Court: Was that marked for identification?

Mr. Turkus: It was, your Honor. Would you like to see it?

The Court: Yes, I would like to see it.

Mr. Turkus: (To reporter) Will you read the question to which Mr. Talley has taken such violent objection?

9596

Mr. Talley: I said that the testimony yesterday was that Sam was not at the restaurant, was not at the theatre, was not at the birthday party, had nothing to do with it except that they met—the family met—at Sam's place of business. That is the testimony from this witness yesterday. Now the District Attorney is trying to make it appear that this witness yesterday said that Sammy was at the party.

The Court: I thought that was what he said.

9597

By the Court:

Q. What was the fact? Did Sam go to the party? A. No, sir.

Q. You mean you left him at ten o'clock and went to the party and he stayed in the store?

A. Yes, sir.

Q. Your brother Sam did not go to the party?

A. No, sir.

9598

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By Mr. Turkus:

Q. You testified yesterday that you all met in brother Sammy's automobile store, didn't you? A. That is right.

Q. That he was present when your mother was there, when Mendy was there, and this Dottie whom you called Eisenstein was there. Do you remember that? A. We met in the store.

9599

Q. Didn't you say Sammy was present? A. He was present at the store.

Q. All right, Sammy has been around this court for how long, out in the corridor? A. The last time—

Q. How many days or weeks has Sammy been outside? A. Sammy is in the army.

Q. Yes, but he has been standing out in the corridor in his army uniform? A. He has been in the last four days.

Q. And he was brought up as a witness, wasn't he?

9600

Mr. Talley: I object to that, if your Honor pleases.

The Court: How does he know?

Q. Wasn't he brought up here as a witness, to your knowledge, and when you saw this picture, People's Exhibit Z-26 for identification, Sammy is no longer a witness; isn't that it?

Mr. Talley: I object to that, incompetent, irrelevant and immaterial.

The Court: Sustained.

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9601

Mr. Talley: And most improper.

The Court: The jury will disregard it.

Q. Was Sammy to your knowledge brought up here as a witness?

Mr. Talley: Object to that as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Talley: Exception.

9602

A. Can I see that picture? Can I see the picture again?

Q. Never mind the picture. The question is, was Sammy to your knowledge brought up here as a witness?

Mr. Talley: It was objected to. Your Honor has ruled upon it.

The Court: Overruled. You may answer that without seeing the picture.

A. Yes, sir.

Q. He was brought up as a witness. And he was brought up from some army camp, wasn't he? A. That is right.

9603

Q. And he has been around the court, waiting to take the witness-stand; isn't that right?

Mr. Talley: Objected to—not permitted in the court-room.

The Court: I have here page 2989 of the minutes of yesterday on matter which is in dispute. According to that, in the group at Sammy's store: "Q. Yes, who

9604

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was in the group that went from Sammy's store to the restaurant? A. My brother"—apparently referring to Sammy because he had just been spoken of on the previous page—page 2988; "Q. Who was present at Sammy's store that night? A. My brother and Sammy." This shows a distinction between brother Mendy and Sammy. "Q. Were you there before they came? A. My mother and Sammy were there before I came." The following page: "Q. Yes, who was in the group that went from Sammy's store to the restaurant? A. My brother, Mendy, myself, my mother, Blanche, and Dottie."

9605

Mr. Talley: There is no significance to that comma after "brother". My brother Mendy, was the testimony.

The Court: In view of the previous question and answer on the previous page, I am calling that to your attention because there there is a distinction which refers to his brother and Mendy.

9606

Mr. Talley: No question about his testimony yesterday, Judge. He testified they met at Sammy's store.

The Court: The jury can figure that out. There has been a colloquy as to what was meant. Here is the record. The jury can figure what it means.

Mr. Talley: I object to the command of the Court and the interpretation of the record.

The Court: The jury will interpret.

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9607

Mr. Talley: It is not the proper interpretation and it is not the testimony given by this witness in the manner your Honor has sought to interpret.

Mr. Turkus: We won't quibble about that. He said he was in the store, that he was intended to be called as a witness, and I have a question which this colloquy has yet prevented the answer from being recorded.

The Court: Let us have the question.

9608

Mr. Talley: Will your Honor read the record as to this witness' testimony as to who went up to the restaurant uptown, when they got to the Brass Rail? You are trying to convey that Sammy Weiss was present at the restaurant and theatre and so forth. He did not say that yesterday and I am trying—You know it already but I am reminding you what the testimony is.

The Court: Judge Talley asked for something further on on page 2989, following what the Court just read by question and answer, as to who constituted the group that went from Sammy's store to the restaurant, so I will read the next few questions and answers: "Q. Did you go by automobile from Sammy's store? A. Yes, sir, we did. Q. Where did you go? A. To the restaurant. Q. Where was the restaurant? A. The Brass Rail. Q. Where was that? A. Seventh Avenue and 49th Street. Q. Did you all go in there? A. Yes, sir, we did."

9609

9610

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Mr. Turkus: There is a pending question.

(Pending question read.)

Mr. Talley: Objected to.

The Court: He cannot say that.

By Mr. Turkus:

9611

Q. To your knowledge hasn't Sammy been out in the corridor for the past four days, waiting to take the witness-stand after you got through?

Mr. Talley: Objected to, if your Honor pleases.

The Court: He can state whether or not he has been in the corridor, he has seen him in the corridor, in the last four days.

A. Yes, sir.

Q. Do you know now of your own knowledge that Sammy won't take the witness-stand?

9612

Mr. Talley: Of course, nothing could be more clearly objectionable than that.

The Court: Sustained.

Mr. Talley: I am almost ashamed to interpose an objection to it in a court.

The Court: You have the ruling. Sustained.

Q. Has there been any conversation between recess yesterday and this morning between you and the lawyers in reference to Sammy taking the witness-stand? A. No, sir.

Q. Did you tell the lawyers between recess

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9613

yesterday and the start of court this morning about that picture?

The Court: Don't show it.

Q. Z-26 for identification? Yes or no. A. No, sir.

Q. You said not one word to any of the counsel for your brother about this picture, Z-26 for identification? A. No, sir.

Q. The picture of your brother Sammy? A. No, sir.

9614

Q. Did you tell Sammy about the picture Z-26 for identification?

Mr. Talley: I object, if your Honor pleases, to any further questions upon a paper that is not in evidence.

The Court: Overruled.

Mr. Talley: Exception.

A. No, sir.

Q. Did you tell any member of your family or any one of the lawyers who represent your brother as to the picture of your brother Sammy, Z-26 for identification? A. No, sir.

9615

Q. So that as far as you are concerned, what is portrayed on that picture is in your mind only?
A. That is right.

Mr. Talley: I object to that, if your Honor pleases. I am not objecting to anything about his conversations with any attorneys in this case.

The Court: Overruled.

Mr. Talley: But I certainly do object to

9616

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that type of examination and to that question.

The Court: Overruled.

Mr. Talley: Exception.

Mr. Turkus: May I have Judge Talley seated I think we can get along much nicer. We can get along much nicer if he sits down.

Mr. Talley: Is that all that is bothering you?

9617

Mr. Turkus: It bothered you.

Mr. Talley: Not in the least. I had to make so many objections to your absurd questions I could not be getting up and down.

The Court: Those things happen in the best of trials.

Mr. Talley: This is not the best of trials.

Mr. Turkus: Not for Judge Talley, it is not. I agree with you.

Mr. Talley: I never saw such a thing, never; never dreamed of listening to anyone like you.

9618

Mr. Turkus: I am only a beginner.

The Court: These things happen in the best of trials and, as Judge Talley said, also in the worst of trials. Now proceed.

The Witness: Can I say something, your Honor?

The Court: No.

By Mr. Turkus:

Q. The family consists of yourself, Sidney

Weiss; is that right, the Weiss family? A. Consists of who?

Q. Yourself, Sidney? A. That is right.

Q. Your brother Sammy? A. That is right.

Q. A third brother Maxie? A. That is right.

Q. A fourth brother Solomon? A. That is right.

Q. A fifth brother Mendy? A. Yes.

Q. A sixth brother Mannie Weiss? A. Murray.

Q. Is he sometimes called Mannie? A. No, sir.

9620

Q. And your mother, Mrs. Weiss? A. That is right.

Q. On this birthday of all birthdays, your 26th, was Maxie Weiss at the party? A. No, sir.

Q. Was Solomon Weiss at the party? A. No, sir.

Q. Was Murray Weiss at the party? A. No, sir.

Q. And did Sammy Weiss go on to the moving pictures and the various restaurants? A. No, sir.

Q. But there was one outsider, this Mrs. Isaacson, on this birthday of all birthdays? A. That is right.

9621

Q. Wasn't this alibi about being at your birthday party on September 12, 1936, cooked up by you and others as far back as 1936?

Mr. Talley: I have to object to that question, as much as I dislike to do it. It is incompetent, irrelevant, immaterial; so improper that I am almost ashamed to have to make the objection to it.

Mr. Turkus: Don't be so sensitive.

9622

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Mr. Talley: I am over-sensitive about lawyers who don't know how to conduct themselves in a court. You are one of them.

Mr. Turkus: I work for Judge O'Dwyer, not Judge Talley.

Mr. Talley: Judge O'Dwyer is welcome to you, I tell you that.

Mr. Turkus: I can see I am not very welcome to you.

9623

Mr. Talley: You certainly are not. I like a lawyer to be a gentleman.

Mr. Turkus: The feeling is mutual.

Mr. Talley: And know how to conduct himself, and you don't.

Mr. Turkus: I think you have trespassed more than anybody.

The Court: Will this ever stop?

Mr. Turkus: All right.

The Court: The Judge is not ashamed to overrule the objection.

9624

Mr. Talley: Is the inference that your Honor would be ashamed to sustain it?

Mr. Turkus: It looks like it.

Mr. Talley: I am not ashamed to take an exception to it, I tell you that.

The Court: Please.

Mr. Turkus: Now that we have gotten through with all of the sensitivity here, may we have an answer to the question?

(Pending question read.)

A. No, sir.

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9625

The Court: "Cooked up" means fabricated.

The Witness: No, sir.

Q. Why, wasn't the alibi fabricated so that you could have an outsider, in addition to the members of the family, to give support to it?

Mr. Talley: Same objection.

The Court: Overruled.

Mr. Talley: Exception.

9626

A. No, sir.

Q. Why, this Dottie Isaacs or Eisenstein as you call her, she has been in the society and company of Blanche Weiss for years, hasn't she? A. That is right.

Q. And she has been befriended and she is obligated to Blanche Weiss, for years, isn't she?

Mr. Talley: Objected to as calling for a conclusion; incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Talley: Exception.

9627

A. No, sir.

Q. Why, hasn't Blanche Weiss sheltered her in her own home when her husband Yonkel was in jail?

Mr. Talley: Objected to, incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Talley: Improper. Exception.

A. I would not know.

9628

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Q. Didn't Blanche and Mendy Weiss buy this woman clothes at the Gold Craft Clothes, 714 Broadway? A. I would not know it.

Q. Didn't they provide her not only with lodging and shelter but with food on the occasions when her husband, the pickpocket, was in jail?

Mr. Talley: Objected to as incompetent, irrelevant and immaterial.

9629

The Court: Sustained as assuming something not on the record.

Mr. Talley: Prejudicial and decidedly improper.

Q. Wasn't Yonkel a pickpocket?

Mr. Talley: Objected to.

A. I don't know.

Q. Didn't Mendy Weiss and Blanche Weiss furnish this Isaacson woman with clothing and with shelter and with food on various occasions when Mrs. Isaacson's husband Yonkel was in jail?

9630

Mr. Talley: Objected to.

The Court: He said he did not know.

Q. Why, you can even tell us right now the name of the moving picture you saw in September, 1936, can't you? A. No, sir.

Q. Why, didn't you check that up at the Capitol? A. I did not check nothing.

Q. Why, didn't you check up at the Capitol

that the Capitol show September 12, 1936, got out at exactly 2:00 A. M., the midnight show? Didn't you check that? A. No, sir.

Q. You remembered then from September, 1936, that you emerged from the Capitol theatre at 2:00 A. M. in the morning, didn't you? A. I did not get that.

(Question read.)

A. Yes, sir.

Q. On this outstanding birthday of all birthdays, can't you remember now the picture you saw? A. No, sir.

Q. Did you, between September, 1936, and the time you took the witness-stand, either directly or indirectly check up on the name of the picture playing at the Capitol on September 12th? A. No, sir.

Q. Maybe I can help you. Wasn't it "The Gorgeous Hussy"? A. I don't know.

Q. And wasn't Robert Taylor playing one of the star leads? A. I don't know.

Q. Your birthday was on September 13th, a Sunday, this birthday of all birthdays? A. Yes, sir.

Q. And you celebrated on Saturday? A. That is right.

Q. You celebrated on Saturday because Monday morning you had to get up to go to work early and you did not want to be out late; is that it? A. No, we celebrated Saturday night.

Q. Now, in between September 12, 1936, and the time that you took the witness-stand, how

9634

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many times have you seen Dorothy Isaacson?

A. September 12, 1936?

Q. Yes. A. Until now?

Q. Yes. A. A number of times.

Q. Many, many times? A. That is right.

Q. Between September 12, 1936, and the time that you took the witness-stand, did you and Dorothy Isaacson ever talk over the alibi? A. I asked if she remembered 1941—

Q. Just yes or no first.

9635

Mr. Talley: I ask that the witness be allowed to answer the question.

The Court: That is what the Court wants him to do.

Q. Yes or no first. Then we will find out when the conversation was.

The Court: Listen carefully to the question and answer it.

(Pending question read.)

9636

A. Yes, sir.

Q. How many times? A. I took her to Judge Talley's office.

Q. How many times did you talk over the alibi with Dorothy Isaacson? A. I took her twice to Judge Talley's office.

Q. That does not help us. You may have talked to her other times. A. I asked her once before if she remembered at my birthday party.

Q. When was that that you spoke to her about the alibi for the first time? A. In the summer of 1941.

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9637

Q. Where did you find Dorothy Isaacsen in the summer of 1941? A. Downtown.

Q. Where downtown? A. I just don't remember.

Q. Why, you are the man who, in the interests of justice, were going into Brownsville to get witnesses; can't you remember as far back as the summer of 1941 where you were to meet the only outside alibi witness for your brother on a murder charge?

9638

Mr. Talley: I object to the form of the question.

The Court: Overruled.

Mr. Talley: Exception.

A. I seen her downtown. I don't know just where. Maybe I seen her on Grand Street; maybe I seen her on Clinton Street. I don't remember.

Q. Not "maybe". A. I don't remember. I am telling the truth. I seen her some place downtown.

9639

Q. Was it in a saloon? Was it where? What kind of premises? Was it a house? Was it a saloon? Was it a gambling joint? What kind of a place was it that you saw her? A. I just don't remember where I seen her.

Q. Can't you remember the character of the premises where you met the only outside witness to an alibi in your brother's murder charge?

Mr. Talley: I object to the form of the question.

The Court: Overruled.

Mr. Talley: Exception.

9640

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A. I just don't know where I seen her.

Q. Did you go looking for her? A. Yes.

Q. Don't you remember where you looked for her and found her in the summer of 1941? A. I went looking for her. I don't know where I found her.

Q. What place did you look for her? A. On Grand Street—

9641

Mr. Talley: Objected to, incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Talley: Pretty far afield now.

The Court: The Court is allowing it on the question of memory, in view of the fact he has testified in such detail as to something which happened five years ago.

Mr. Talley: Most of the witnesses have been testifying to things they say happened five years ago.

The Court: That has nothing to do with the Court's ruling.

9642

(Last question and answer read.)

A. And Clinton Street.

By the Court:

Q. Do you mean on the street or in a residence? A. On the street.

By Mr. Turkus:

Q. When you started out to search for her, did you look in the saloons? A. I did not search for her any particular day.

Q. How many days did you search for her before you found her? A. You are asking me questions which I can't answer you

Q. I can see that. But on this particular day that you found her, into what kind of places did you go looking for her? Were they saloons? Were they gambling joints? A. No saloon.

Q. All right, candy stores? A. Candy stores.

Q. Restaurants? A. Candy store.

Q. Only candy store? A. In a candy store, yes, sir.

Q. What candy store did you look for her in?

A. On Grand Street.

Q. Grand and where? A. Grand and Pitt.

Q. Did you know where she lived? A. Yes.

Q. Did you go to her house? A. No, sir.

Q. Where did she live in the summer of '41?

A. Clinton Street, I guess.

Q. What number? A. I don't know.

Q. Did you go to the house in which you guessed she lived? A. No, sir.

Q. You did not look for her in her home but you looked for her in a candy store? A. That is right.

Q. Did she hang-out in a candy store?

Mr. Talley: Object to the form of the question.

The Court: Overruled.

Mr. Talley: Exception.

A. She stood there sometimes.

Q. Was that candy store a hang-out for East Side people?

9646

Sidney Weiss—For Defts.—Cross

Mr. Talley: Object to the form of the question.

The Court: Overruled.

Q. Had you ever been to that candy store before? A. I seen her there before.

Q. What is the name of the candy store? A. I don't know.

Q. Was it Gold's? A. I don't know.

9647

The Court: He said Grand and Pitt. Wasn't Gold's at Grand and Lewis?

Mr. Turkus: It was my error in saying Gold's. It could not have been at that address that he gave.

Q. Was that the first time that you had seen this Dorothy Isaacson in reference to being an alibi witness? A. Yes, sir.

Q. That was after you had talked things over with some other people, wasn't it? A. No, sir.

9648

Q. Did you go out in search of Mendy Weiss' alibi witness, Dorothy Isaacson, without talking to anybody else about it? A. That is right.

Q. You did not tell your mother about it? A. I don't remember if I told her before or after. I asked her if she remembered the incident—

Q. That is susceptible of yes or no. A. That is the only answer I can give you. I am giving you the truth.

Q. I can see that, too. Let us get along with this. Did you tell Sammy you were going out for this alibi witness? A. No, sir.

Q. Did you tell Blanche you were going to go out looking for Dorothy Isaacson? A. No, sir.

Q. Did you keep it a secret that you were going out to look for Dorothy Isaacson? A. I didn't have to look for her. I just went to see her. I asked her if she knew about it.

Q. I know that. You told us that. But did you keep it a secret from the others in the family? A. No, sir.

Q. That you were looking for Dorothy Isaacson? Whom did you tell in the family? A. I don't know who I told, if I told anybody or not.

Q. This is the summer of '41? A. That is right. 9650

Q. When you met Dorothy Isaacson at this candy store, did you tell her what happened September 12, 1936? A. No, sir.

Q. Did she remind you what happened September 12, 1936? A. I asked her if she remembered—

Q. Answer yes or no.

Mr. Talley: I object to him being interrupted and I ask that the witness be allowed to answer the question without interruption. 9651

Mr. Turkus: Without interruption from Judge Talley. I join in it.

Mr. Talley: Mr. Turkus stops the witness.

The Court: (To reporter) Read it.

(The following was read: "Did she remind you what happened September 12, 1936? A. I asked her if she remembered— Q. Answer yes or no.")

Mr. Talley: Then he was interrupted.

9652

Sidney Weiss—For Defts.—Cross

The Court: I think it is an-illuminating answer.

Mr. Turkus: All right.

Q. And did she then and there outside the candy store tell you everything that happened September 12, 1936? A. No, sir.

Q. No? A. I asked her if she remembered we went out on a birthday.

9653

Q. And what did she say? A. She hesitated awhile and then she said yes, she remembered.

Q. So that after she hesitated for a short time, she remembered that on September 12, 1936— A. I asked her if she remembered which birthday it was. She said my 26th birthday.

Q. She remembered your 26th birthday? A. Yes, she remembered my 26th birthday.

Q. And she remembered that you went to the Brass Rail to eat, didn't she? A. I asked her—

Q. Wait. Did she remember that without your telling her? A. At that time, I don't know.

9654

Q. Did she remember that she went to the Capitol movies with you? A. At that time I don't know. I asked her if she remembered my 26th birthday.

Q. Don't volunteer. A. Well, only way I can tell you.

Mr. Turkus: Will your Honor admonish the witness not to volunteer?

Mr. Talley: The witness does not need any admonition.

Mr. Turkus: Judge Taylor presides, not Judge Talley. I ask for an admonition to him not to volunteer.

Sidney Weiss—For Defts.—Cross

9655

The Court: I did not quite understand. Did she suggest it was your 26th?

Mr. Turkus: He has already testified to that.

By the Court:

Q. Or did you suggest that to her? A. I asked her if she remembered my 26th birthday.

Q. If she remembered your 26th birthday?

Mr. Turkus: He has given a contrary answer to your Honor than he stated on cross-examination.

9656

The Court: I understand.

Mr. Talley: That is not so.

By Mr. Turkus:

Q. Didn't you just testify, before Judge Taylor asked you the question, that Dorothy Isaacs said she remembered your 26th birthday? A. I asked her if she remembered my birthday party.

9657

Q. Didn't you just testify? A. I asked her if she remembered my birthday party.

The Court: Please. (To reporter) Will you go back a few questions?

(Questions and answers read as directed.)

Q. After she told you she remembered your 26th birthday, did she say she remembered eating in the Brass Rail restaurant? A. I don't remember.

9658

Sidney Weiss—For Defts.—Cross

Q. Did you suggest to her that you ate in the Brass Rail restaurant? A. No, sir.

Q. Did you suggest to her that you went to the Capitol theatre? A. No, sir.

Q. Did you suggest to her that thereafter you went to Ratner's restaurant on Delancey Street? A. No, sir.

Q. Did you suggest to her that you met in Sammy's automobile store? A. No, sir.

9659

Q. Did you suggest to her that your mother was there; that Blanche Weiss was there, that Mendy Weiss was there; and that Sammy Weiss was there? A. No, sir.

Q. Did she suggest those items to you? A. No, sir.

Q. And after that conversation you took her to the lawyer's office? A. Not right away.

Q. How long after? A. I don't know.

Q. How many days? A. I don't know.

Q. How many weeks? A. I don't know.

Q. How many months? A. It must have been a few months, I guess.

9660

Q. After you had that conversation in which you asked Mrs. Isaacs on if she remembered your birthday party and she said she remembered your 26th birthday and a few months elapsed thereafter before you took her to a lawyer's office, did you tell anybody else about your conversation with Dorothy Isaacs on? A. No, sir.

Q. You kept that a secret?

Mr. Talley: I object to the form of the question.

A. There is no secret.

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9661

The Court: Overruled.

Mr. Talley: Exception.

Q. Who was the first person that you told that Dorothy Isaacs remembered your 26th birthday? A. Nobody.

Q. Nobody at all? A. No.

Q. You mean this Court and jury were the first ones told by you? A. No, sir, no, sir. I didn't have to tell it to nobody. I just asked her if she remembered my birthday.

9662

Q. To whom did you report that? A. To nobody. I didn't have to report it to nobody.

Q. Isn't Mrs. Isaacs out in the hall? A. Yes.

Q. Is this Court and jury the first— A. No, sir. If you want to know if I took her to the lawyer's office—

Q. Don't anticipate the answer. A. I don't know what you are trying to do. Too bad I didn't have much of an education so I can tell you something. I could answer your questions properly.

9663

Q. No, it does not take education. It takes candor; it takes truthfulness. A. That is what I am telling you.

Mr. Talley: May we have this discussion cut short?

Mr. Turkus: The witness has waxed philosophical and I tried to discuss philosophy with him.

The Court: Let it be stopped. Mr. Witness, just answer questions.

9664

Sidney Weiss—For Defts.—Cross

Q. Here is the question. Listen. A. Slow, please, let me get it so you won't confuse.

Q. If I say something you do not understand—

A. You are liable to jump down my throat.

Q. I won't jump down your throat. A. Just take it easy.

Q. You are not afraid of me, are you? A. No, sir.

9665

Q. All you have to do is to speak slowly. We will get along very nicely. Is this Court and jury the first persons who heard you report what Dorothy Isaacson told you outside the candy store in the summer of 1941? A. No, sir.

Q. Who was the first person that heard that report from you? A. You mean after I spoke to her?

Q. Yes. A. Mr. Cuff.

Q. How long after you spoke to Mrs. Isaacson was that? A. I don't know.

Q. Was it two months, three months? A. A few months. I don't know.

9666

Q. Did you and Mrs. Isaacson and Sammy and Blanche sit down together at any time and talk over the alibi? A. First time was in Mr. Cuff's office.

Q. Where you all sat down and discussed the alibi? A. Yes. Sammy was not there.

Q. Then Blanche was there, Dorothy was there, and you were there? A. That is right.

Q. And the three of you discussed the alibi? A. We told it to Mr. Cuff.

Q. The three of you had a conference together? A. We told it to Mr. Cuff.

Q. One reminding the other? A. No; Mr. Cuff was asking us questions.

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9667

Q. Were the three of you questioned together in the same room? A. Yes, sir.

Q. And did the three of you compare notes with each other? A. We had no notes.

Q. Well, I mean comparing mental notes, each one refreshing the other about what happened on this outstanding 26th birthday?

Mr. Talley: I object to the question and the form of the question.

The Court: Overruled.

Mr. Talley: Exception.

9668

A. No, sir.

Q. Did you remember every detail at the time that you were in Mr. Cuff's office, that you met in Sammy's automobile place, that you ate in the Brass Rail, what time you left the Brass Rail, what time you got at the Capitol for the midnight show, what time you got out of the Capitol, where you went to Ratner's restaurant, who drove the car, and what happened afterwards? Did you know all of that yourself? A. No, sir.

9669

Q. Well, who helped you remember that? A. I spoke to Blanche. I spoke to Dottie and I got the story.

Q. Isn't it a fact that long before you ever reached Mr. Cuff's law office, and going way back years ago, you and Blanche and Dorothy Isaacs and your brother cooked up this alibi? A. No, sir.

Mr. Talley: Objected to, if your Honor pleases.

The Court: Overruled.

9670

Sidney Weiss—For Defts.—Redirect

Mr. Talley: The form of the question is highly objectionable. I take an exception.

Redirect examination by Mr. Talley:

Q. Were you present in my office with Muggsy Cohen on the day that the District Attorney was referring to that you met him in front of my place with your sister? A. Yes, sir.

9671

Q. Did you hear him make a statement to me? A. Yes, sir.

Q. Did you hear him tell me that he had been in the District Attorney's office—

Mr. Turkus: Just a minute, your Honor.

Q. —in May of 1941—

Mr. Turkus: Your Honor, this is objectionable.

Mr. Talley: Let me finish my question.

9672

Mr. Turkus: Oh, no, you cannot put before the jury something improper.

Mr. Talley: I ask to have my question upon the record before there is any objection.

The Court: Finish the question. Then the objection will be taken without disturbance and the Court likewise without disturbance will rule.

Mr. Turkus: Your Honor, it is obvious from—

The Court: Finish the question.

Sidney Weiss—For Defts.—Redirect

9673

Mr. Turkus: It is improper what he heard.

(Pending question read.)

Q. in the month of May, 1941?

Mr. Turkus: It is improper.

The Court: Sustained.

Mr. Talley: Exception. I call your Honor's attention—

The Court: Don't argue.

Mr. Talley: I don't think it will be necessary.

9674

The Court: Don't call attention. I will excuse the jury if you are going to do that because I know why you are doing it.

Mr. Talley: Can't I state to the jury—

The Court: I told you to take your exception and let it go at that. I know the rules of evidence. The jury does not.

Q. Did Cohen tell you that he had been in the District Attorney's office and talked with Bernstein in May of 1941?

9675

Mr. Turkus: Objection.

The Court: Sustained.

Mr. Turkus: This is improper.

Mr. Talley: Exception.

Mr. Turkus: And reprehensible under the ruling of the Court.

Q. Did he tell you that in May, 1941, he saw Mr. Turkus there in the presence of Mr. Bernstein?

9676

Sidney Weiss—For Defts.—Redirect

Mr. Turkus: Just a minute. Will your Honor admonish counsel?

The Court: Do you object?

Mr. Turkus: I certainly do, most vehemently.

The Court: Objection sustained.

Mr. Turkus: And I ask further--

The Court: I cannot talk against you, Mr. Turkus. The objection is sustained and counsel for the defendant Weiss is admonished to go no further with this line of questions.

9677

Mr. Talley: Exception.

The Court: It is grossly improper.

Q. The District Attorney asked you about your interviews with Muggsy Cohen. Do you remember that? A. Yes, sir.

Q. Will you tell us what Muggsy Cohen said to you?

Mr. Turkus: It is objectionable.

The Court: Sustained.

9678

Mr. Talley: Exception.

Q. Did you see the statement given to me by Maggsy Cohen, taken by a stenographer in my office?

Mr. Turkus: Objection. It is incompetent, irrelevant and immaterial.

The Court: Overruled. Just answer yes or no.

A. Yes.

Q. And you personally were in my room during

Sidney Weiss—For Defts.—Redirect

9679

the entire time that Muggsy Cohen was talking to me? A. Yes, sir.

Q. There was nobody else present except yourself, Cohen, my stenographer and myself; is that right? A. That is right.

Mr. Talley: In order that my record may be complete, does your Honor wish me to understand that I can ask no further questions as to the conversations had between this witness and Muggsy Cohen, in view of the fact that the District Attorney, reading from a statement—

9680

The Court: Wait a minute. The jury is excused.

Mr. Talley: —a typewritten statement, interrogated this witness.

The Court: The jury is excused. See how far you go.

(The jury retired from the court-room.)

The Court: All right.

Mr. Talley: If your Honor pleases, it is apparent to me that I have been unable to make my position clear to your Honor.

9681

The Court: Perfectly clear.

Mr. Talley: If I had made it clear to your Honor, your Honor could not make the rulings that you are now making.

The Court: Perfectly clear.

Mr. Talley: The District Attorney in his cross-examination of this witness—

Mr. Turkus: May the witness be excluded during this discussion of law?

The Court: Yes.

9682

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(Witness leaves the court-room.)

9683

Mr. Talley: —asked him as to the details of a conversation that he had with Muggsy Cohen. He asked him what Muggsy Cohen had said to him and what he said to Muggsy Cohen. He read from a typewritten statement what was apparently a statement which he claims or would represent to be a statement given to him by Cohen in the District Attorney's office. The door was flung wide open by the introduction of that matter, that statement, and the questions asked of this witness. The door was opened to give defendant the right to question this witness at length as to what the complete conversation was. The District Attorney, by well recognized rules of evidence, has no right to elicit part of a conversation and then attempt to close the door, with the Court's aid, to the complete conversation which would give the jury an opportunity to understand the entire picture that is being presented. The District Attorney elicited from this witness that he brought Muggsy Cohen to my office; that a statement was made by Muggsy Cohen to me. He brought out that it was made in the presence of a stenographer. I submit that you cannot close the door upon that entire transaction, that it would be rank injustice to this defendant for you to do it; it would be unfair to put the responsibility on this jury of interpreting these things unless they get them in their entirety.

9684

The Court: The argument is so at variance with the rules of evidence that the Court takes a view that it is really addressed to the gentlemen of the press. Are you through?

Mr. Talley: I don't think I ought to be called on to say anything more after that insult that I have just received from your Honor. What do I care about the press in this case? I am concerned with the client whom I represent here and I object and I resent that statement which your Honor has made before. I care nothing about the gentlemen of the press here or what the newspapers say. I am only concerned with one thing and that is to see that this man, Mendy Weiss, gets a fair trial and he is not going to get it with your Honor making statements like that about counsel. I except to your Honor's statement, to your Honor's comment. It is highly improper and untrue.

9686

The Court: The Court's patience and forbearance will continue. Are you all through? Are you through?

9687

Mr. Talley: I am through arguing the point that I have been attempting to make plain to your Honor, that the door has been opened to the admission of this testimony. On that I am finished for the moment.

The Court: Bring back the jury.

Mr. Talley: And I want to note upon the record my objection to your excusing the jury on these occasions when I have attempted to state my position upon these

9688

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matters of evidence, what I claim to be your Honor's erroneous rulings.

The Court: All right.

Mr. Talley: That is prejudicial in itself.

Mr. Turkus: May the record note that Muggsy Cohen—

The Court: Let us have an end to this.

(The jury returned to the court-room.)

9689

The Court: Bring in the witness.

(The witness resumed the stand.)

The Court: All right. Proceed.

By Mr. Talley:

Q. Did you hear all that Cohen said to me?

A. Yes, sir.

Q. You were asked about a conversation you had over in Brownsville with Cohen when you asked him to come over to your attorney's office? A. Yes, sir.

9690

Q. And tell what happened. Do you remember that? A. Yes.

Q. Tell us all that conversation, please. What did he tell you?

Mr. Turkus: I object to this.

The Court: Sustained. This is strictly under the rules of collateral impeachment.

Mr. Talley: Exception.

The Court: And that rule will be upheld strictly.

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9691

Mr. Talley: You cannot uphold that rule against the defendant where it is elicited on cross-examination.

The Court: The jury is excused again. Gentlemen of the jury, this time I will give you lunch. It is not worthwhile bringing you back for five minutes. Do not discuss the case, let nobody talk to you about it. Keep your minds open.

Mr. Talley: I object to the jury being excused at this juncture of the case as being prejudicial.

9692

The Court: You want the jury to hear your speech and they are not going to hear it. The jury may leave.

Now the defendants are remanded.

(A recess was thereupon taken to 1:30 P. M.)

AFTERNOON SESSION

TRIAL RESUMED

9693

The Court: Judge Talley, before recess you objected to the exclusion of the jury during a discussion on points of evidence. On second thought, the Court was of the opinion there might be something to that—the jury might form an impression that these were occasions of discord between the Court and counsel. For that reason I simply recessed.

The jury is now here and the witness is out of the room. If you will be patient

9694

Sidney Weiss—For Defts.—Redirect

9695

and take your seat, I will try to straighten out that situation, and, possibly, to your satisfaction. At any rate, I think you will understand that the Court is trying to rule according to the laws of evidence. With the question of counsel raising his voice and adopting a truculent attitude in his manner of address to the Court, the Court will overlook that. The Court realizes that this trial involves unusual stress, and even counsel with great legal training and learning are human, and when anything in the way of disorder occurs the Judge must try his utmost to keep his head and not permit himself to be sensitive or annoyed. So that will be just forgotten.

9696

Now, referring to my notes of the cross-examination in regard to the incident in your office, I find nothing there which in any way reflects upon you or upon the conduct of your own office. I shall read you precisely what I put down and can assure you that anything I did not put down I considered of no evidentiary value whatever. "Saw Muggsy early September; admitted suggesting to Muggsy he meet Weiss's lawyer; later contact Muggsy same matter. They met in front of 40 Wal Street at Talley's office. Muggsy had a man with him; had a drink, and then all went to Talley's office. Denies asking Muggsy in a private room what had occurred in the District Attorney's office. Took Muggsy home." Now, that is all I took down.

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9697

Of course, the prosecution, under the rules of evidence, was entitled, in cross-examination, to develop, if it could, anything in the way of collateral impeachment arising from this incident. But it did not do so, because, under the rules of collateral impeachment, when the witness who is being cross-examined says "No," that closes the book on that point and the cross-examining counsel may not thereafter put anybody on the stand under the theory of collateral impeachment and try out that issue. He is bound by that answer.

9698

(At this point the defendants entered the courtroom.)

The Court: I did not notice the defendants were not in while I was calling that to your attention. I do not think you want to make any point of their absence. If anybody makes the point, we will have it read.

9699

Mr. Talley: I make no point of the absence of the defendants during your Honor's statement.

Defense Counsel: No objection.

The Court: Of course, putting myself in the position of counsel sitting in the trial of a case, having this brought out before the jury, I know I would feel, if I was the lawyer in the case, that my honor was, in the eyes of the jury, impugned. But looking at it as a judge, that is not correct; and

9700

Sidney Weiss—For Defts.—Redirect

I so instruct the jury, that it does not reflect on your office in any way whatsoever.

9701

Now, had the witness under cross-examination on that inquiry given affirmative answers as to anything alleged to have been related to counsel for Weiss, then that would, to a certain extent, possibly to a full extent, open the door by way of contention, of other matter for disclosure of the interview which would shed a light upon a further explanation of what the witness admitted. But the witness admitted nothing except what I have just read, and from my notion it does not go to the extent of collateral impeachment because of the negative answers of the witness. After all, soliciting Muggsy to go to your office was proper. Either side has the right to seek out anybody and quiz him and take him to the lawyer's office. The lawyer has a right to quiz him—a witness does not belong to either side, and there is no impropriety in that. There is no impropriety in having a drink, certainly; and there is no impropriety, so far as I can see, in taking home a witness who had to go all the way from Brownsville to No. 40 Wall Street.

9702

Now, the Court has really tried to be in good faith. I think maybe it would be a good thing if you just allowed the matter to rest there. But if you are not satisfied, if you still challenge the good faith of the Court, the Court would be obliged to patiently permit you your right to take an exception to what the Court has said or done.

Sidney Weiss—For Defts.—Redirect

9703

Mr. Talley: Judge Taylor, I have at no time attempted or designed to impugn the good faith of the Court. I do quarrel with your rulings upon this matter, because I do not agree with them, and I do not think they are correct and proper rulings. I at no time was concerned with the fear that my good faith or my—what shall I use—my integrity was being impugned by any of these suggestions. The point I was trying, apparently ineffectually to make, was that the witness, being interrogated about conversations which he had with Cohen, the District Attorney established an open door for me to present to the jury the entire conversation and the statement which was made in the presence of this witness in my office. I am willing to offer in evidence the statement he made to me then and there. I tried to lay the foundation for that when Cohen was on the stand. Now that Cohen has left the stand this witness was interrogated in detail, but from a written statement, ostensibly and apparently a statement given to the District Attorney by Cohen himself. When that door was opened, I had the right to present to the jury the entire statement that was made in my office in the presence of that witness, as to what Cohen said of the actual happening. Despite what your Honor has just stated, I am still of the opinion that the law of evidence permits me to do that precise thing. The door has been opened by cross-examining into it. There is just one more thing: It is

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9706

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not the question of my attempting to impeach any witness—or my own witness on the stand, Weiss; I am endeavoring to bring out all the details of the conversation by the witness, emanating from Muggsy Cohen. That is not an attempt to impeach this witness, and I submit, respectfully, I have a very definite and precise right to bring that out, and that your Honor, in preventing me from bringing it out, is committing a serious error in your ruling in this case.

9707

The Court: The Court will instruct the jury, when a witness is under cross-examination and impeachment is sought, and the witness answers in the negative to any question which, if answered in the affirmative would tend to impeach, that the jury will disregard the question and form no impression from it, whether read from a paper—whether apparently read from a paper—or otherwise. Under the rules of evidence, this method of cross-examination cannot be avoided.

9708

Now, Judge Talley, you have your exception, and I think that your Honor has been vindicated. I have never known you to do a dishonorable act. I am sure you are incapable of doing a dishonorable act, so please do not be sensitive about anything brought out in relation to that incident in your office.

Now, there was a possibility of this having been developed: that, had the witness admitted that preliminary to your examination of Muggsy he had taken him

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9709

into a private room and had given him instructions as to what he was to say—that then another rule of evidence would come in—a rule as to fabrication. But that has not been developed. That will have to be disregarded.

Suppose we go ahead with the case? I think with that explanation, possibly everybody is in better poise now than before lunch.

Mr. Talley: May I note an exception to your Honor's statement of what your Honor regards is the law in this case?

9710

The Court: Yes.

Mr. Talley: And I want to express my appreciation of your Honor's expression of confidence in me. I assure you I was not concerned about that at all.

The Court: I am more concerned, Judge, with mutual esteem and friendship between counsel and the Court than with the many things in connection with this case, because it will soon be over. But I hope that the friendship between the Court and counsel will be lasting.

9711

Mr. Talley: I have no fear or doubt on that score, I assure you.

SIDNEY WEISS, a witness in behalf of the defense, resumed the stand and testified further as follows:

Mr. Talley: I offer in evidence a certified copy of a birth certificate of the witness Sidney Weiss, certificate dated June 12, 1941, certified by the Acting Assistant Registrar of Records, City of New York.

9712

Sidney Weiss—For Defts.—Redirect

(Received without objection and marked Defendants' Exhibit 10.)

Redirect examination by Mr. Talley:

Q. This twenty-sixth birthday celebration of yours is impressed upon your mind because you had a quarrel with Mendy just before that?

Mr. Turkus: I object to that as leading, suggestive, and brought out on direct.

9713

The Court: That was answered. Objection sustained.

Mr. Talley: Exception. I have no further questions. Perhaps I had better indicate what this is to the jury.

The Court: Yes.

9714

Mr. Talley: This, gentlemen of the jury, is a birth certificate in the usual form issued by the City of New York, Department of Health, Bureau of Records. It certifies: "The foregoing is a true copy of the record in the custody of the Registrar of Records." I need not read it in full. It says, "Below is a photostatic copy of certificate filed in the Bureau of Records, Department of Health, City of New York," and certifies as to the birth of Sidney Weiss, as being September 13, 1910. The residence of the mother is given as 415 East 3rd Street. Then it gives other details. Of course, it is subject to your inspection, but the important thing shows that he was born the 13th of September, 1910, which would make him 26 years old on the 13th of September, 1936.